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CASES,

WITH

THE OPINIONS

OF

THE ATTORNEY-GENERAL OF ENGLAND,
EDWARD PENNEFATHER, K.C.,
R. B. WARREN, K.C., AND
D. R. PIGOT, K.C.,

SHEWING THE

DEFECTIVE STATE OF THE LAW REGULATING
JOINT STOCK BANKS,

AS IT NOW STANDS,

And the total want of Protection afforded to Shareholders against
The Mismanagement or Misconduct of Directors,

AS

EXEMPLIFIED BY THE FACTS STATED

IN RESPECT TO THE

AGRICULTURAL AND COMMERCIAL
BANK OF IRELAND.

LONDON:
PRINTED BY J. L. COX AND SONS,
75, Great Queen Street, Lincoln's-Inn Fields.

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CASE

ON behalf of numerous Shareholders in the Joint Stock Banking Company called "The AGRICULTURAL and COMMERCIAL BANK of IRELAND."

THE main questions for the consideration of Mr. Warren are:

1st. Whether the Directors have made a legal call on the Shareholders; and

2dly. If so, Whether, under the terms of the deed, they can enforce payment of such calls.

It may be right here to mention, there are two sets of Shareholders, one called Holders of Irish Stock (residing in Ireland), and the other Holders of British Stock (residing in Great Britain); and the question seems to be, Whether it was competent for the Directors, on the 4th October last, to make a call on the British Stock Holders without the sanction of a meeting of Proprietors called for the purpose; and on the 17th October last, to obtain the authority of the Shareholders present at the usual half-yearly meeting, to make a call on the Irish Shareholders, when such general half-yearly meeting was only convened "to receive the report of the Consulting Com-" mittee for the past half year, pursuant to the deed of " settlement, and to consider a dividend."

The first deed recited relates to Irish Stock; and the second deed seems to have become necessary, in consequence of the Directors having, pursuant to a clause in the first deed, appropriated £250,000 of the nominal capital, in 10,000 shares of £25 each, to residents in Great Britain.

The calls in question seem to have been made on the British Shareholders on the 4th October last, and on the Irish Shareholders the 17th October last. With this short preliminary statement, we will proceed with the case.

In the month of June 1834, certain persons in Ireland conceived it desirable to establish a Joint Stock Bank in Dublin, to be called "The Agricultural and Commercial Bank of Ireland;" and they accordingly issued a Prospectus, stating the objects they had in view, and in general terms the plan of the proposed Company.

The clauses in the Prospectus, so far as they relate to the capital and the calls to be made on the Proprietors, are as follow:

ction 2d. "That the ultimate extent of capital of this Bank shall "not exceed one million of shares, on each of which the "sum of one pound sterling (exclusive of one shilling for "defraying the expenses of outfit) shall be paid; and no "further call be made without the sanction of a meeting "of Proprietors duly convened for the purpose, nor in "larger instalments than ten shillings per share. The "Consulting Committee to have the power, from time "to time, of appropriating one-third of the clear profits "to the increase of the capital stock, not to exceed "£5,000,000 in the whole."

The Prospectus then provides for a variety of other matters; and particularly for 50,000 provident shares, to be subscribed for in weekly and monthly instalments of sums not less than one shilling: and then goes on

"That the shares of this Company, except the provi- 18th Clause.
"dent shares, shall be paid up when required, by two
"instalments of ten shillings each, subject to the provi-
"sions in second section of Prospectus."

In pursuance of this Prospectus, a meeting was held in Dublin on the 18th July 1834. A Provisional Committee was formed: they travelled to various parts detailing the advantages of such a Bank, and on the 9th October 1834 another meeting was held. The Provisional Committee made their Report, which was confirmed. Resolutions approving the plan were agreed to, and among others the following:

"That the leading principles of the Prospectus now
"read be confirmed and adopted as those to govern the
"Company and Subscribers; and that they be embodied
"in such shape and form by the Consulting Committee
"as may be requisite to give them due and legal effect."

Accordingly a deed was prepared, and which is dated 1st December 1834, and is made between the Shareholders executing the deed, of the one part, and certain persons specially named (and who are also Shareholders), of the other part. Deed, 1st Dec. 1834

The deed recites, that in or about the month of June 1834, a prospectus appeared in the public papers of a plan for the establishment of a Joint Stock Banking Company, to be subscribed for in shares of £5 each, and to have branches, under certain conditions and regulations, for the issue of notes and the general purposes of banking, at cities and towns in Ireland distant at least fifty miles from Dublin. And reciting, in pursuance of such prospectus, several of the persons whose names were thereunto subscribed and seals affixed, associated themselves together as a Committee, to more fully place said plan before the public; and, in furtherance of such pur-

pose, a public meeting was held, pursuant to advertisements in the newspapers, at Morrison's great Rooms in the city of Dublin, on or about the 18th day of July 1834, at which meeting resolutions were passed approving of said plan of a Joint Stock Banking Company, and a Committee, termed a Provisional Committee, was then and there appointed, with power to add to their number, for the purpose of more widely extending said plan and obtaining subscribers thereto, and generally to do whatever was expedient to promote the establishment of said Company upon just and fair principles, and in pursuance of an Act of Parliament passed for the regulation of Joint Stock Banks in Ireland (*viz.* the 6th Geo. IV. cap. 42). And reciting, the said Committee so appointed, appointed Deputations through Ireland, to hold public meetings, and to submit the plan of the said Banking Company to the merchants and traders throughout Ireland, in consequence whereof Committees were appointed in many towns, and subscribers to a large amount presented themselves; and on or about the 9th day of October last a public meeting of Shareholders was held in Dublin, pursuant to public advertisement, and the said Provisional Committee presented their Report and resigned their said office, and a Consulting Committee* was appointed to superintend the affairs and concerns of the Company, with power to them to fill up any vacancies which might happen in their body prior to the 15th November 1835, by elections from amongst the largest class of Shareholders. And reciting, the members of the said Committee, so named and elected, were, according to the said Prospectus, to qualify by paying up the instalment of ten shillings on each of the shares so engaged for by

* This Consulting Committee would be called Directors in England.

them, respectively, or to cease to act as members of such Committee, and the subsequent instalments on said shares were and are to be payable as called up, pursuant to said Prospectus. And reciting, that the Consulting Committee of said Agricultural and Commercial Bank of Ireland, as named and elected at said meeting held on the 9th October last, were as follows, *viz.* (*here follow the names of fifteen gentlemen*), were publicly announced in the daily newspapers and public journals of Ireland; and the acting or attending members thereof in the city of Dublin, *viz.* (*here follow the names of ten gentlemen*), being convinced that the establishment of the Company would be of use, and an encouragement, security, and extension of property, agreed, together with several persons whose names are hereunto subscribed and seals affixed, and every of them, to consolidate and establish such Company in the shares of £5 each, and further as after mentioned, under the provisions of an Act of Parliament for the regulation of such Joint Stock Banking Companies in Ireland exceeding six partners in number, passed in the Imperial Parliament of the 6th year of the reign of His late Majesty King George IV. cap. 42. And accordingly, and in pursuance of the instructions of said general meeting held in Dublin on the 9th October 1834, and in order to the commencement of business, the said Consulting Committee and others, on the 24th day of October last, signed the heads of said Prospectus, as the basis of agreement or constitution of said Company, as agreed upon by the general meeting held on the 9th of said month of October, and caused the Partners or Shareholders in said Company, as same appeared on the books of said Company, to be registered pursuant to the provisions of said Act in the Stamp-office, Dublin, and obtained a license accordingly. And in order more fully

and precisely to establish said Company as regards the regulations and agreements amongst themselves, and in pursuance of the instructions of said general meeting, it hath been agreed upon to embody the Prospectus of said Company, as so agreed upon and signed, as the basis of the constitution of said Company, in a deed of settlement, and to declare by these presents the rules, regulations, and agreements, which are to govern said Company, and the present and future members thereof.

The deed is then witnessed, that the several parties mutually covenant with each other,

First. That the said several persons, parties thereto, and also the several persons who should thereafter, by virtue of or under the provisions herein contained, or in pursuance of the proceedings heretofore had and resolutions passed, and said registry so made as aforesaid, and which might at any time thereafter be made in pursuance of the provisions of the said Act 6th George IV. cap. 42, succeed to the respective shares or stand in the respective places of them respectively, should be and continue a Company, by the name of "The Agricultural and Commercial Bank of Ireland," and that the said Company or Copartnership should continue and exist for the term of nine hundred and ninety-nine years (unless the same should be sooner discontinued, as thereinafter mentioned), for the purpose of the establishment and formation of Branch Banks of issue, under the provisions and subject to the regulations of the Act therein before recited, 6th George IV. cap. 42, and for discounting bills and notes, receiving lodgments and deposits of money in the said Banks or Branches of the Company established or to be established in such cities and towns in Ireland, as might be deemed fair and proper by the Consulting Committee for the time being, at a distance of not less than fifty miles

from Dublin, so long as the law of Ireland should prohibit the formation of Joint Stock Banks issuing notes at any lesser distance from Dublin; after which period Banks or Branches of the said Company should or might, at the discretion of the Consulting Committee for the time being, be established also at any lesser distance; and generally for carrying on and transacting all species of banking business in Ireland consistently with law, and for the other purposes, and under and subject to the terms, clauses, conditions, and provisions herein-after expressed and contained, that is to say:

"That the capital of this Bank shall not exceed one 1st Clause.
"million of shares, on each of which the sum of £1 ster-
"ling (exclusive of one shilling per share for defraying
"the expenses of outfit) shall be paid, and no further
"call be made without the sanction of a meeting of Pro-
"prietors duly convened for the purpose, nor in larger
"instalments than 10*s.* per share. The Consulting Com-
"mittee to have the power from time to time of appro-
"priating one-third of the clear profits to the increase of
"the capital stock. Said capital stock not to exceed five
"millions in the whole.

"That the shares of this Company, except the pro- 23d Clause.
"vident shares, shall be paid up when required, by two
"instalments of 10*s.* each, subject to the provisions in
"second section of Prospectus as before-mentioned.

"That when any further instalments in respect of the 69th Clause
"shares shall be required, in conformity with and accord-
"ing to the provisions herein-contained, the Consulting
"Committee for the time being shall, by summons or
"notice in writing signed by at least three of them, and
"inserted in at least three of the public newspapers pub-
"lished in Dublin, and three of the public newspapers
"published in London, if such latter advertisement be

" deemed expedient as aforesaid (one of which shall be " the London Gazette), give unto the said Members or " Proprietors twenty-one days' notice, at least, of their " calling on them to pay such instalments on their and " every of their shares of the capital stock of the said " Company.

st Clause. " That upon the neglect or refusal of any Member of " the said Company, or of his executors, administrators, " or assigns, legatees or next of kin, to pay any further " instalment on or before the day to be appointed for the " payment thereof, then, and in every such case, the Con- " sulting Committee for the time being shall call upon " such person or persons, by letter, to pay such instal- " ments with interest within thirty days; and if such per- " son or persons shall still neglect or refuse to pay the " same, it shall be lawful for the Consulting Committee " for the time being to declare that such share or shares " of such person or persons who shall so neglect or refuse " to pay such instalments, as required in manner afore- " said, and all the benefits and advantages whatsoever " attending the same, or to be had or got, received or " taken thereby, shall from thenceforth be forfeited to " the said Company; or, at the option of the Consulting " Committee, it shall be lawful for the said Consulting " Committee to order and direct such proceeding at law " or in equity, to be taken and instituted against such " person or persons, for the recovery of any residue which " shall then remain unpaid, in respect of the instalment or " instalments due on his, her, or their share or shares in " the said capital stock, as to the Consulting Committee " for the time being shall seem expedient.

l Clause. " That in case the said Consulting Committee for the " time being shall declare any such share or shares for- " feited, and enter a resolution to that effect in the books

" of the Company, signed by the majority of the Members " for the time being of the said Consulting Committee, " then, and in every such case, all and every such share " and shares shall be totally and for ever forfeited to and " for the use and benefit of the said Company, and all " payments made thereon shall be lost by the parties for- " merly entitled thereto, and the said persons shall thereby " cease to be Members and Proprietors of the said Com- " pany in respect of any such share or shares, and shall " not be entitled to any relief at law or in equity touching " the same.

" That the Consulting Committee for the time being 73d Clause. " shall, if they think proper, sell all such forfeited shares " in the Company's capital stock to any person or persons " willing to become the purchaser or purchasers thereof, " and the purchaser or purchasers of such share or shares " shall, upon payment of his or their purchase money, " and executing a deed of sale and covenant, according to " the form and purport of the deed of sale and covenant " mentioned in the schedule here-under written, become " a Member or Members of the said Company in respect " of such forfeited share or shares so purchased by him or " them as aforesaid.

" That when and so often as any person or persons 84th Clause. " shall break, or refuse, or neglect to perform or comply " with any of the covenants, conditions, and stipulations " contained in these presents, and which on his, her, or " their part or parts ought to be performed and complied " with, it shall be lawful for the Consulting Committee " to direct an action or suit to be commenced and prose- " cuted in the name or names of the person or persons, " who must necessarily be, or ought to be, the plaintiff " or plaintiffs thereto, against the person or persons for

" the time being committing such breach, or so refusing " or neglecting as aforesaid, or his, her, or their heirs, " executors, or administrators; and the person or persons " in whose name or names any such action or suit shall be " so commenced, shall not discontinue, release, or be- " come nonsuit in such action or suit, without the consent " of the Consulting Committee, and shall be indemnified " out of the funds of the Company against all expenses " and losses which they, or he or she, may incur or sustain " in consequence of such action or suit; and the sum or " sums of money to be recovered in any such action or " suit shall form part of the funds of the Company, and " the Consulting Committee shall dispose of the same " accordingly.

89th Clause. " That, subject and without prejudice to the power " hereinbefore given to the General Assemblies, the Con- " sulting Committee shall have the entire superintendence " and control of the affairs and concerns of the Com- " pany, and shall, in all cases provided for by these pre- " sents, or hereafter to be provided for by the General " Assemblies, act in strict conformity to the laws and re- " gulations hereby established, or hereafter to be esta- " blished by the General Assemblies; but in all cases for " the time being unprovided for by these presents or by " the General Assemblies, it shall be lawful for the Con- " sulting Committee to act in such manner as shall appear " to them best calculated to promote the welfare of the " Company. And for the better guidance of the Consult- " ing Committee in their superintendence and control over " the affairs of the Company, it shall and may be lawful " for a general Consulting Committee specially called for " that purpose to make whatever bye-laws and rules they " shall think proper, provided the same be not incon-

" sistent with, or repugnant to, the fundamental prin-
" ciple or constitution of the Company, as established
" and settled by these presents, or as altered and
" changed by virtue of the powers hereinbefore given
" to General Assemblies for that purpose, and at any
" time to alter or repeal all or any of the bye-laws and
" rules which may be so made by the said Consulting
" Committee.

" That no person shall be liable to pay any such instal- 127th Clause.
" ment until called upon by the Consulting Committee by
" a notice in writing, to be advertised in at least three of
" the public newspapers published in Dublin, and in the
" London Gazette and two other public newspapers pub-
" lished in London (if such advertisement in London be
" deemed expedient), giving to the Members thirty days'
" notice, at the least, to pay the same; but every such
" further instalment shall be paid, without fail, on or be-
" fore the day mentioned in such notice.

" That notwithstanding any thing hereinbefore con- 128th Clause.
" tained, or from which a contrary inference may be
" drawn, no person or persons liable to pay any further
" instalment shall be discharged from that liability, in
" consequence of the Consulting Committee having, in
" pursuance of the power hereinbefore given for that pur-
" pose, declared to be forfeited to the Company the shares
" in respect of which such persons shall be liable to pay
" such further instalment, but the Company shall be en-
" titled to such further instalment in addition to the for-
" feited shares." *

These are all the clauses that appear to us to touch the question of calls, except the following, in reference to the powers of the General Half-yearly Meetings, and under

* *Qy.* If this is not inconsistent with the Act of Parliament.

which, it will be recollected, a call was made on the Irish Shareholders.

30th Clause. "That each half-yearly General Assembly shall be "held on the third Monday in October and the third "Monday in the month of April in every year, at the "hour of eleven o'clock in the forenoon of each day of "meeting, and shall be convened by the Consulting Com- "mittee in the manner hereinafter mentioned; and the "first half-yearly General Assembly shall be held on the "third Monday in the month of October 1835."

46th Clause. States, the Consulting Committee "shall call the half- "yearly General Assemblies by advertisement in three "daily newspapers published in Dublin, and three daily "papers published in London, if such latter advertise- "ment be rendered expedient for any of the reasons "hereinbefore mentioned (one of which shall be the "London Gazette), ten days, at least, before the day "fixed for holding the same.

36th Clause. "That a General Assembly shall have full power, in all "cases not otherwise to be specially provided for by these "presents, to superintend, regulate, and control all the "affairs and concerns of the Company.

104th Clause. "That as to all questions relating to any other business "to be transacted at the General Assemblies, a bare "majority of votes of all the qualified Members present, "or acting by proxy, and not declining to vote, shall be "sufficient to decide the same."

We introduce the following clause, for the purpose of shewing that, notwithstanding the new rules introduced in the new deed hereafter set out, still the provisions established for payment of the instalments are specially protected.

41st Clause. "That two successive extraordinary General Assem- "blies, especially called for that purpose, shall have power

" to make any new laws, regulations, and provisions for " the Company, or to amend, alter, or repeal all or any " part of the existing laws, regulations, and provisions " of the Company, provided such new, amended, or " altered laws, regulations, and provisions, do not extend " to amend, alter, or repeal all or any part of the laws, " regulations, and provisions established and settled by " these presents for the payment of the instalments on " the respective shares; and provided such new, amended, " or altered laws, regulations, and provisions, do not " extend to diminish or lessen any contract theretofore " made in pursuance of these presents, or the security of " any person dealing with the said Company, nor to dis- " continue the Company, except as hereinbefore pro- " vided."

The foregoing are all the clauses that appear to us applicable to the calls, and we only here introduce the 29th clause for the better understanding the reference to it in the new deed.

" That all the shares in the Company's said capital 29th Claus " stock of one million, not appropriated or taken on or " before the 1st January 1835, shall be and become the " property of the Company, and to be issued, disposed " of, or appropriated to such cities, towns, or places, and " in such manner, under the control and direction of the " Consulting Committee, as may be deemed most for the " benefit of the Company."

The Company, formed in the way described, went on under the deed of 1st December 1834 until the close of the year 1835, when, in pursuance of the before-mentioned 29th clause of the deed, they appropriated £250,000 of the capital stock remaining undisposed of, to be taken and subscribed for by persons resident in Great Britain, in 10,000 shares of £25 each, and in July 1835 they issued a

Prospectus of their additional plan, and which contained the following:—

"The Agricultural and Commercial Bank of Ireland "is a bank of deposit, issue, loan, discount, and agency, "having in full operation seventeen branches, and founded "on the District Branch Principle, *viz.* an extended "proprietory capital subscribed locally in each town "where a branch is established, in shares of £5 each, "with an equal distribution of profits. There are at "present about 1,200 partners in this Company registered "at the Stamp Office in Dublin, residents of the leading "towns in Ireland. The Bank being now established, "the Committee of Direction, agreeably to the deed of "settlement and the instruction of a General Meeting, "appropriated £250,000 of the Company's stock to the "chief towns in *Scotland*,* to be denominated British "Stock, and to be consolidated into 10,000 shares of £25 "each, to be subscribed for subject to the following con- "dition: First. The sum of £5 per share on subscribing "to be paid at the houses of the several English and "Scottish Bankers, as above, to the credit of the Agri- "cultural and Commercial Bank of Ireland; the second "call of £5 per share to be paid in six months after the "first. No further call to be made without three months' "notice, nor without the approbation of a public meeting "duly convened."

In pursuance of this prospectus, and for the purpose of bringing the British Shareholders within the liabilities of the Company, a new deed was prepared, and which is dated the 10th August 1836; and which deed, after referring shortly to the deed of the 1st December 1834, recites, "That it was "by the said deed declared, amongst other things, that the

* It is England and Scotland in the prospectus issued in Manchester.

" capital of said Bank should be one million sterling, to " be raised in shares, as therein mentioned, with a power " of increase to a sum not exceeding five millions in the " whole, as therein mentioned. That said Company, in " pursuance of the agreement therein, and after duly " registering the partners in said Company, or Subscribers " to the stock thereof, in the Stamp Office in the city of " Dublin, pursuant to said recited Act, did commence " the business of banking in the town of Nenagh, by " opening a Branch Bank therein, pursuant to said Act, " said town being upwards of fifty miles from the city of " Dublin, and had since opened Branch Banks in various " other parts of Ireland, for the purpose of carrying on " business as Bankers. That by the 29th clause of said " deed of settlement it was provided, that all shares of the " capital stock of said Company not appropriated or " taken on or before the 1st day of January 1835 should " be and become the property of the Company, and be " issued, disposed of, and appropriated to such cities, " towns, and places, and in such manner, under the con- " trol and direction of the Consulting Committee of said " Company, as might be deemed most for the benefit of " said Company. That, in pursuance of said clause and " the powers contained in said deed, the consulting Com- " mittee of said Company did, subsequently to said 1st " January 1835, appropriate a sum of £250,000 of the " capital stock of said Company remaining undisposed of " and not appropriated on said 1st January 1835, to be " taken and subscribed for by persons resident in Great " Britain; such stock to be subscribed for and to be raised " in shares of £25 each, under and by virtue of a Pros- " pectus issued in relation thereto by the then Committee " of the said Company.

" That several wealthy merchants and traders, and

" other persons resident in Great Britain, became sub-
" scribers to and proprietors in said stock so allocated and
" appropriated to Great Britain, denominated British
" Stock, under and by virtue of said Prospectus so issued
" as aforesaid, and by which subscription to said stock
" they and each of them, their and each of their executors,
" administrators, and assigns, became entitled to the pro-
" fits of said Company, and of the trade and business
" carried on, or to be carried on, and thereby, according
" to their and every of their interest in said capital stock,
" and to all dividends thereupon, as fully and entirely as
" the Irish Proprietors of said shares in the capital stock
" of said Company.

" That it was, amongst other things, declared by said
" Prospectus, that the said shares of £25 each, so compos-
" ing the British Stock, as aforesaid, should be paid up by
" instalments of £5 each on each share; but no more or
" greater instalment to be called for or to be paid up by
" the holders of the said British Stock than £10 on each
" share therein, payable by two instalments of £5 each,
" without three months' previous notice by public adver-
" tisement and due notice.*

" That the several persons whose names are thereunto
" subscribed and seals affixed, became subscribers to the
" capital stock of said Company, and to said British stock
" of £250,000 part thereof, in the respective sums, shares,
" and proportions thereinafter mentioned, and set oppo-
" site, and annexed and following to their several and
" respective names.

" That the several persons whose names were therein-
" after mentioned as subscribers to said capital stock, and
" to said British Stock, and whose seals were affixed to

* This, it will be observed, is not a correct statement of the prospectus.

" the now-reciting deed, were then proprietors of said " stock, or subscribers to the shares therein, according to " the amount set opposite to their respective names there- " inafter mentioned, and also to the number and descrip- " tion of the share or shares set opposite or following their " several and respective names and name, subject to the " clauses, covenants, and agreements thereinafter men- " tioned.

" That the said Company had, since the formation " thereof, proceeded with the business thereof, and had " established several Banks, and had formed several " Branches and establishments in various cities and " towns of Ireland, and amongst others in the town of " Belfast.

" That a large and influential proprietary in said town " of Belfast and in the province of Ulster had, in addition " to the other districts in Ireland, subscribed for and to " the shares in the capital stock of said Company therein- " after mentioned, in the amounts set opposite the names " of the subscribers or holders of stock or shares in said " province of Ulster and thereinafter mentioned.

And reciting, " On the 18th day of April last a " General Meeting of Proprietors in said Company was " held at the Company's house in Fleet Street in the " city of Dublin, pursuant to the provisions of said deed " of the 1st of December 1834, and a report was then " and there made to the Proprietors there assembled by " the Consulting Committee of said Company, recom- " mending, amongst other things, a dividend on the " clear profits of the trading of said Company of £5 per " cent., said dividend to be paid for the half-year pre- " ceding: which recommendation was approved of and " said dividend struck." And reciting, " that several " resolutions were passed at said meeting touching the

" business of said Company and regulations thereof, and " that, in pursuance of the spirit of said resolutions and " to carry same into effect, as also to make and effect " some new laws and regulations, and to modify and alter " some of the clauses of said deed of settlement, the " Consulting Committee deemed and found it necessary " to call and convene two Special Meetings of the Pro- " prietors in said Company, as hereinafter mentioned." And reciting, " it had been deemed expedient, at a " Special General Meeting of the Proprietors duly con- " vened by public advertisement, according to the provi- " sions, covenants, agreements, and regulations of said " deed of settlement, held at the Company's house in " Fleet Street, in the city of Dublin, on Monday the " 23d day of May 1836, to alter, amend, and modify " various clauses of said deed, as also to make several " new laws and regulations thereinafter mentioned, and " which said alterations and amendments were subse- " quently submitted to another General Meeting or " Special General Meeting of the Proprietors in said " Company, also held pursuant to the covenants, direc- " tions, and agreements in said deed of 1st December " 1834 mentioned, and which said Meeting was duly " held, as aforesaid, at said Company's house on the 8th " day of June last, and the following clauses of said " original deed were altered, amended, and modified, as " hereinafter mentioned, *viz.* the 1st, 11th, 14th, 20th, " 23d, 76th, 93d, 94th, 99th, 115th, 145th, 155th, 161st; " and other regulations, new laws, and agreements were " decided upon, as after-mentioned, so as to permit " Proprietors resident beyond twenty miles from Dublin " to vote by proxy under certain regulations, to allocate " *a certain portion of the capital stock of the Company to* " *the chief towns and cities in Great Britain, to permit*

" *persons to take* £10 *and consolidated* £25 *shares* of the " Company's stock, and to extend the right of voting to " holders of £10 and £25 shares, so as to confer the " franchise in proportion to the increased value the new " shares should bear to the £5 shares originally issued, " and in sundry other particulars to amend, alter, and " modify said deed, and to add thereto and to the provi- " sions thereof." And reciting, " it was deemed expedient " and became necessary, under and by virtue of the " clauses, covenants, and conditions of said deed of " settlement, that a new deed should be prepared and " perfected, to embody all such alterations and modifica- " tions, *and so framed as to include the British Share-* " *holders, and to fully and entirely confer on them all the* " PRIVILEGES, *profits*, and immunities of Proprietors in " the Company's stock, under the provisions and agree- " ments herein contained." And reciting, " *in pursuance* " *of said prospectus so issued as the basis of the British* " *subscription as aforesaid, subscribers in England and in* " *Scotland, or in Great Britain*, have, at or before the " execution by them of these presents, paid unto the " Company's Agents or Bankers the sum of £10 sterling " in respect of each such share held by them respectively, " being the first and *second instalment on such British* " *stock, and certificates have been delivered* accordingly to " the British Shareholders; and the Irish Proprietors of " shares in the capital stock of the Company have also, " at or before the execution by them of these presents, " paid unto the Consulting Committee of the said Com- " pany, or to their Agents or Bankers, the first and " second instalments upon their respective shares, as also " the outfit in said general deed mentioned, or the sum " of £5. 5*s.* on each consolidated £25 share." And reciting, " the numbers of the shares taken by each of

" the parties to these presents, together with their sub-
" scriptions and places of residence, as also the amount
" subscribed for by each of the parties to these presents,
" are written opposite to his or her name and seal sub-
" scribed and affixed by him or her to these presents.

" It is witnessed, that the parties mutually covenant
" with each other, that they shall be and continue a
" Company, by the name of 'The Agricultural and
" Commercial Bank of Ireland,' for nine hundred and
" ninety-nine years, &c. &c., under and subject to the
" terms, clauses, conditions, and provisions in said deed
" of settlement of 1st December 1834, and as altered and
" modified by these presents, pursuant to the resolutions
" of the General Meeting of Proprietors, and which are
" herein contained, as also the clauses and agreements of
" said former deed pursuant to said alterations, embodying
" also herein the new laws, regulations, and agreements
" duly made at the Special General Meeting of Pro-
" prietors duly held for that purpose, as aforesaid.

t Clause. " That the capital of the Company shall be One million
" sterling, which may be increased to Five millions, as
" after-mentioned; and that the said capital sum of One
" million or Five millions, as the case may be, shall and
" may be raised, called up, paid, and subscribed for, in
" shares of £5, £10, and consolidated £25 shares; and
" that a sum for and towards the expenses of outfit be
" raised, by paying, in addition to the amount or value of
" the Irish shares, of one shilling per £5 shares; and that
" the instalments of £5. 5*s*. on each consolidated Irish
" £25 shares and the British shares, by *instalments of £5,*
" *as hereinafter mentioned,* such payments to be made on
" subscribing for the shares, and the remainder or balance
" of such share by instalments as after-mentioned, as may
" be expedient under the laws and regulations of the

" Company. The £10 and £25 shares British stock to
" be paid up, called for, and subscribed in and by instal-
" ments of £5 per share, as aforesaid and as after-men-
" tioned. The Board of Directors or Consulting Com-
" mittee from time to time to have the power of appro-
" priating one-third of the clear profits annually, with the
" approbation of a General Meeting of Proprietors, as
" in said former deed mentioned, to the increase of the
" capital stock of the Company, not to exceed Five mil-
" lions in the whole.

" That the £5 shares of the Company shall be paid up 21st Clause.
" as in said former deed of 1st December 1834, including
" outfit; and that the £10 and consolidated £25 shares,
" whether Irish or British stock, created, authorized, and
" decided upon by certain resolutions passed at a General
" Meeting of the Proprietors held in Dublin the 23d day
" of May and on the 8th day of June 1836, and the Pro-
" prietors of the British stock heretofore published under
" and in pursuance of the powers vested in the Consulting
" Committee for the appropriation of the stock of the
" Company, be paid and payable by instalments or calls
" not exceeding £5 at any one time, and giving at least
" three months' notice of all such calls subsequent to the
" first; save and except that the £10 shares of British
" stock may be paid up at once, equally with the two in-
" stalments of the British shares of £25 each.

" That when any further instalments in respect of the 59th Clause.
" shares shall be required, in conformity with and accord-
" ing to the provisions of said former and of this deed, the
" Board of Directors or Consulting Committee for the
" time being shall, by summons or notice in writing signed
" by at least three of them, inserted in at least three of
" the public newspapers published in Dublin and three
" published in London, one of which shall be the Lon-

" it shall be lawful for the Board of Directors or Consult-
" ing Committee to direct an action or suit to be com-
" menced and prosecuted, in the name or names of the
" person or persons who must necessarily be, or ought to
" be, the plaintiff or plaintiffs thereto, against the person
" or persons for the time being committing such breach,
" or so refusing or neglecting as aforesaid, or his, her, or
" their heirs, executors, or administrators, and the person
" or persons in whose name or names any such action or
" suit shall be commenced, shall not discontinue, release, or
" become nonsuit in such action or suit, without the con-
" sent of the Directors or Consulting Committee, and
" shall be indemnified out of the funds of the Company
" against all expenses and losses which they, or he or she,
" may incur or sustain in consequence of such action or
" suit; and the sum or sums of money to be recovered in
" any such action or suit shall form part of the funds of
" the Company, and the Board of Directors or Consult-
" ing Committee shall dispose of the same accordingly.

4th Clause. " That instalments upon British stock shall be paid, as
" required by the Board of Directors or Consulting Com-
" mittee, to the Company's Bankers or Agents in Great
" Britain.

th Clause. " That, subject and without prejudice to the power
" hereinbefore and in said former deed given to the
" General Assemblies, the Board of Directors or Con-
" sulting Committee shall have the entire superintend-
" ance and control over the affairs and concerns of the
" Company, and shall in all cases provided for or here-
" after to be provided for by the General Assemblies, act
" in strict conformity to the laws and regulations hereby
" established, or hereafter to be established by the General
" Assemblies; but in all cases for the time being unpro-
" vided for by the said former deed and by these presents,

" or by the General Assemblies, it shall be lawful for the " Board of Directors or Consulting Committee to act in " such manner as shall appear to them best calculated to " promote the welfare of the Company. And for the " better guidance of the Board of Directors or Consulting " Committee in their superintendance and control over " the affairs of the Company, it shall and may be lawful " for a General Board of Directors or Consulting Com- " mittee, specially called for that purpose, to make what- " ever bye-laws and rules they may think proper, pro- " vided the same be not inconsistent with or repugnant " to the fundamental principle or constitution of the " Company, as established and settled by said former deed " and by these presents, or as altered and changed by " virtue of the powers hereinbefore given to General " Assemblies for that purpose, and at any time to alter or " repeal all or any of the bye-laws and rules which may " be so made by the said Board of Directors or Consult- " ing Committee."

These are all the clauses in the new deed applicable to the calls. The following clauses relate to the calling the half-yearly General Assemblies and their powers:

" That a General Assembly shall have full power, in 31st Clause. " all cases not otherwise specially provided for by these " presents and by the said deed of 1st December 1834, to " superintend, regulate, and control all the affairs and " concerns of the Company.

" That the Board of Directors or Consulting Com- 39th Clause " mittee shall call the half-yearly General Assemblies by " advertisement in three daily newspapers published in " Dublin, and three daily newspapers published in " London, and two at least published in Scotland, as " aforesaid (one of the English papers to be the London " Gazette), ten days as regards the papers published in

" Ireland, and twenty-one days as regards the three pub-
" lished in Great Britain, at least, before the day fixed
" for the holding of the same.

th Clause. " That the Board of Directors or Consulting Commit-
" tee for the time being shall have power to recommend to
" any half-yearly General Assembly such dividend to be
" made to the Proprietors out of the actual profits of the
" Company, as they shall deem prudent for such Assem-
" bly to confirm or reject, subject to provision as to re-
" serve fund or increased capital before mentioned.

th Clause. " That when the Board of Directors or Consulting
" Committee shall deem it prudent to recommend to any
" half-yearly General Assembly a dividend to be paid out
" of the profits of the Co-partnership to the several Mem-
" bers of the said Company, such half-yearly General
" Assembly shall have full power to order and direct such
" dividends to be made, or at its discretion to withhold or
" restrain the same, subject to the provisions as to reserve
" fund hereinbefore mentioned.

2d Clause. " That as to all questions relating to any other business
" to be transacted at the General Assemblies, a bare ma-
" jority of votes of all the qualified Members present or
" acting by proxy, and not declining to vote, shall be in-
" sufficient to decide the same."

These are all the clauses that appear to us in the new deed applicable to the questions submitted to Mr. Warren. From what we understand, the Directors conceive there is a distinction between the calls on the Irish Shareholders and on the British. That as to the former, they can only make calls at the General half-yearly Assemblies; but as to the British, they are under no such stipulation, and that it is in the power of the Directors alone to make calls, and compel this class of Shareholders to pay up the full amount of their subscription. In other words, they

say they can make a call upon the British stock and Shareholders without at the same time calling on the Irish Shareholders; and, in effect, that they may extract from one set of partners more than from the other. It may be here right to mention, that the Bank in question suspended its payments on the day of November last; and though at the different Branches they continue to pay their notes, still they do not refund their cash deposits, at either the Branches or head Office in Dublin.

As the questions between the Irish and British stock Shareholders are somewhat distinct, we will first state what occurs to us in reference to the Irish. The Directors say, the call on the Irish was in pursuance of the instructions of the Shareholders assembled at the half-yearly General Meeting in Dublin on the 17th October last. By the 30th and 46th clauses in the first deed (see fol. 10), the half-yearly General Meetings were to be held on the third Monday in October and April, and were to be convened by advertisements in three daily newspapers published in Dublin and three in London (one of the latter to be the London Gazette), ten days at least before the day fixed for holding the meeting. By the new deed, 27th clause, the half-yearly Meetings are fixed as above, and the clause is merely copied from the old deed. By the 39th clause new deed, the Board of Directors are to call the half-yearly General Assemblies by advertisement in three daily papers published in Dublin, and three in London, and two at least published in Scotland (one of the said English papers to be the London Gazette), ten days as regards the papers published in Scotland, and twenty-one days as regards the three published in Great Britain, at least, before the day fixed for holding the same.

Without going into the question as to the time in which the advertisements appeared in the Scotch and London

daily papers (and which we are unable at present to discover), we find that in the Gazette of the 30th September last the Directors inserted the following notice:

"AGRICULTURAL AND COMMERCIAL BANK OF IRELAND.

"Half-yearly Meeting.

"Board Room, Fleet Street, Dublin, September 24th "1836.

"The half-yearly General Meeting of Proprietors will "be holden at the Company's house, No. 63, Fleet-street, "on Monday the 17th day of October next, at the hour "of eleven o'clock in the forenoon, to receive the report "of the Consulting Committee for the past half-year, "pursuant to the deed of settlement, and to consider a "dividend.

"Signed, by order of the Board,

"WM. MITCHELL, General Manager."

This notice, it will be seen, was not advertised in the Gazette twenty-one days prior to the meeting, but only eighteen days, and though the 39th rule of new deed states that the advertisements shall be in three London papers and two Scotch papers, and by a strange blunder requires the insertion to be twenty-one days in only three papers published in Great Britain, still we apprehend that, as the London Gazette is specially named and appointed as one of the English papers, the notice of the General Assembly must be advertised therein twenty-one days at least before the Meeting.

The first point therefore is, that due notice was not given of the Meeting of the 17th October.

The second point, we suggest, is, that as the advertisements convening the Meeting was only to receive the report of the Consulting Committee for the past half-year, pursuant to the deed of settlement, and to consider a

dividend, it was not competent for the Shareholders present to order another call, it not being a Meeting of Proprietors (in the words of the 2d clause of the old deed) duly convened for the purpose. The deed, by the 40th clause, specially gives the General half-yearly Assembly power, upon the recommendation of the Directors, to order and direct a dividend, or withhold and restrain the same.

In the 36th clause of the old deed and 31st clause of the new deed, it is stated, that a General Assembly shall have full power in all cases not otherwise specially provided for by these presents *and by the deed of the* 1*st December* 1834, *to superintend, regulate, and control* all the affairs of the Company. The words in italic are the additions in the new deed. We apprehend these powers do not extend to making calls.

The third objection is, that the half-yearly General Assembly is not a Meeting at which a call could be made, unless it was made special, as is done in the East-India House. When anything out of the ordinary course is to be discussed or adopted, the usual course there is to advertise the General Meeting in the usual way, and then add, that it will be made special for certain purposes which are named. By 1st clause in the old deed it is stated, that no further call be made without the sanction of a Meeting of the Proprietors duly convened for that purpose. This, it will be observed, was in exact conformity with the original prospectus. The 41st clause points out the mode at two successive extraordinary General Assemblies to make new laws; it however contains the following restriction:—"Provided such new, amended, or altered laws, "regulations, and provisions, do not extend to amend, "alter, or repeal all or any part of the laws, regulations, "and provisions established and settled by these presents

" for the payment of the instalments of the respective " shares." We submit, though the word *payment* is used, it is, however, to be understood as affecting the actual calls and the mode of making them, and that the proviso means no new laws shall affect the mode stipulated in the deed for making calls.

These are the remarks which occur to us on the old deed, in reference to the Irish stock Shareholders; we will now consider whether the new deed makes any alteration. It will be seen, the latter deed professes to alter, amend and modify, as therein-mentioned, certain specific clauses. and among the rest clause 1. This alteration is in the corresponding clause of the new deed, which states that the capital " shall and may be raised, *called up*, paid, and " subscribed for in certain shares." But *how the calls are to be made is not mentioned, and the important words in the 1st clause in the old deed,* " *that no further call be made* " *without the sanction of a Meeting of the Proprietors duly* " *convened* for *the purpose,*" are wholly omitted; but in the 21st clause of the new deed (see page 14) we find that the £5 shares of the Company (and these are the shares in question) shall be paid up as in said former deed of 1st December 1834, including outfit, &c. Now we submit, that this reference to the old deed lets in the necessity of the call being mentioned, by a Meeting of Proprietors duly convened. By the 59th clause of the new deed the form for a call seems pointed out; for it states, "That " when any further instalments in respect of the shares " shall be required, in conformity with and according to " the *provisions of said former* and of this deed, the Board " of Directors or Consulting Committee for the time being " shall, by summons *or notice in writing signed by at least* " *three of them*, inserted in at least three of the public " newspapers published in Dublin and three published in

" London (one of which shall be the *London Gazette*), and " in at least two Scotch papers, as aforesaid, give unto " the said Members or Proprietors full and sufficient " notice, according to the terms of subscription, as " before and in said former deed mentioned, of their " calling on them to pay such instalments on their and " every of their shares of the capital stock of the said Com- " pany, and that, in addition to said papers, said Commit- " tee may publish the same in such others as may be " deemed proper and expedient."

This clause, it will be observed, makes no distinction between the calls on the Irish and British Shareholders, but seems to point out the form of a general call. There has, however, been no such notice as pointed out in reference to the Irish stock, though it will be seen hereafter such *notice has been issued in reference to the British stock Shareholders.*

The following peremptory notice has been inserted in the Dublin papers, from which it will be seen, as the shares therein alluded to are Irish stock shares, that the Directors only refer to a deed of settlement, and which confirms the notion that they conceive the *Irish stock shares are regulated by the first deed only, and the British stock shares by the second deed.*

" AGRICULTURAL AND COMMERCIAL BANK OF IRELAND.

" Peremptory Notice of Call.

" The Shareholders are required, pursuant to the " public notification already given, according to the Deed " of Settlement, and the instructions of the General " Meeting held on the 17th October last, to pay an " instalment of £2. 10*s.* on each share of £25,* and 10*s.* " on each share of £5, on or before Tuesday the 17th

* These are Irish shares consolidated.

" January next, or they will be liable to the disability " therein stated.

" Signed, by order of the Board,
" W. HUGHES, Secretary.

" Board Room, 68, Fleet Street,
" December 30th 1836.

" N.B. The notes of the Company will be received in " payment of instalment, as also an allowance of the " dividend struck in October, together with the usual " discount to such as anticipate the call."

Mr. Warren will please advise, whether the Directors or Consulting Committee have made, pursuant to the deeds, or either of them, a legal call on the Irish Stockholders, so as to enforce the same by legal proceedings, or by declaring the shares forfeited and selling the same for the benefit of the Company.

With respect to the British stock shares, the following advertisement was inserted in the *London Gazette of* 18*th October last, and repeated in the following Gazette of the* 21*st October.*

" AGRICULTURAL AND COMMERCIAL BANK OF IRELAND.

" Board Room, Fleet Street, Dublin,
" October 4th, 1836.

" The several Proprietors of the British stock (£25 " shares) are hereby required to pay to the Company, " Fleet Street, Dublin, or into the Company's Bankers " in Manchester and Liverpool (the Northern and Cen- " tral Bank of England and the Liverpool Union Bank)

settlement of 1st December 1834 (the first deed), and as altered and modified by the new deed, pursuant to the resolutions of the General Meeting of Proprietors, and which were therein contained, as also the clauses and agreements of said former deed pursuant to said alterations (see the exact words p. 15).

The first clause in the new deed states, the capital and the amount of the call. As to the British shares, it states that they are to be paid "by instalments of £5, as here-"inafter mentioned, such payments to be made on sub-"scribing for the shares, and the remainder or balance of "such shares by instalments, as after mentioned, and as "may be expedient under the laws and regulations of the "Company. The £10 and £25 shares British stock to "be paid up, called for, and subscribed for, in and by "instalments of £5 per share, as aforesaid and *after* "*mentioned.*"

The 21st clause of the new deed states, that the Irish £5 shares shall be paid up as mentioned in the former deed of 1st December 1834, and the £10 and £25 shares, "whether Irish or British stock, created, authorized, and "decided upon by certain resolutions passed at a General "Meeting of the Proprietors held in Dublin the 23d "May and 8th June 1836, *and the Prospectus of the British* "*stock heretofore published, under and in pursuance of the* "*powers vested in the Consulting Committee, for the appro-*"*priation of the stock of the Company*, be paid and payable "by instalments or calls, not exceeding £5 at any one "time, and giving at least three months' notice of all such "calls subsequent to the first."

This clause therefore, it is submitted, embodies the Prospectus, so as to regulate, according to the form prescribed by the Prospectus, the mode of making the call.

The 59th clause points out another mode for making calls, and which implies that the calls are to be made on all the Shareholders, whether Irish or British, in one form. But, towards the close of the deed, and in the 144th clause, it is stated, "that instalments upon British "stock shall be paid as required by the Board of Direc- "tors or Consulting Committee, to the Company's "Bankers or Agents in Great Britain." It is however apprehended, that the call is one thing, and to whom the money is to be paid is another; and that, as the former clauses are silent on this head, this clause only gives the Directors power to say to whom the call shall be paid, and does not give them authority *ex officio* to make calls. If, however, it should be so considered, then we apprehend the calls should have been made by the whole fifteen Directors, and not by the five alone who signed the advertisement inserted in the Gazette.

We submit, however, to the consideration of Mr. Warren, that the Prospectus of the British stock is sufficiently introduced in the deed, to make it part of the deed as to the mode of making calls, and that the Directors have no power to make distinct calls on the two classes of Shareholders at different times and in different forms.

> Mr. Warren will please advise the British Stockholders, whether the call in question on them has been legally made by the Directors and can be enforced,—and whether the Directors have power to make calls on the British Shareholders, without at the same time making corresponding calls on the Irish stock Shareholders; and also advise the British Shareholders what course to adopt to protect their interest, the Directors having given notice that they intend to forfeit the shares.

COPY OPINION.

With respect to the call of the 4th of October, we are of opinion that it was illegal. We think it cannot be supported by the deed of 10th August 1836, even if that deed be binding upon the British Shareholders. It is quite clear that notice of the call was not given as prescribed by the 69th section.

Independently of that objection, we think (unless the English Shareholders have adopted the deed of August 1836 subsequently to its execution) they are not in any manner bound by its provisions. Two objections chiefly lie to that instrument on their part. First, that the creation of the additional stock to the amount of £150,000, in pursuance of the Resolutions of 18th April, 23d May, and 8th June 1836, was in contravention of the stipulations for the advantage of the British Shareholders contained in the Prospectus, namely, that shares to an amount greater than £250,000. should not be issued in England, and that when these should be transferred to Ireland they should not be transferred to England. Secondly, that no further calls should be made than the two first instalments without a General Meeting convened for the purpose of considering that matter. With respect to the first, we find among the papers a letter dated in May 1836, apprizing some of the English Shareholders of the intention to issue £150,000 stock in addition. If they were apprized of that speculation in sufficient time and did not object to it, it cannot be urged with any probability of success. With respect to the second, it is in our opinion an unanswerable objection on the part of such of the Shareholders who have not adopted the deed, against being in any manner bound by any of its provisions,

creating or aiding a power in the Consulting Committee to make a call without the sanction of a previous Meeting.

The call being illegal, it follows that the Committee have no right to declare a forfeiture of the shares.

The rights of the English Shareholders are in our opinion clear. There is much difficulty in applying a remedy.

A remedy can only be obtained in a Court of Equity; for the Consulting Committee having refused to allow any of those resisting the calls to interfere for the convening of a Meeting, no mode exists for righting the English Proprietors under the deed, and they cannot prevent, by any proceeding at law, the Committee from declaring a forfeiture, and subsequently disposing of these shares to others, and recognizing them as partners in the Bank.

In resorting to a Court of Equity, the difficulty is at once presented, that in questioning the validity of the call, those Members are directly interested in sustaining it who are not prejudiced by it, namely, all *but* the British Shareholders. Their interest in upholding the call would in itself render it necessary to make them parties to the suit; but, independently of that, a Court of Equity will not interfere to carry on a partnership, and the dominion of the present Consulting Committee, whom the English Shareholders must seek to restrain from the management of the concern, and to appoint a Manager in their room, can only be obtained as relief auxiliary by winding up the concern to that of a dissolution by a decree of the partnership. For this purpose all the partners must be parties to the suit.

The vast multitude of partners must necessarily make such a suit most unwieldy and expensive, if prosecuted to a decree. The number of probable abatements would,

in all likelihood, postpone to an indefinite period the termination of such a cause. We think, however, that the hazard of a declaration of forfeiture of the shares is one so imminent and pressing, that the English Shareholders, if they do not choose to abandon their shares, ought to file such a bill as we have described, making all the partners parties, and praying a dissolution, an account, and a manager or receiver.

There are abundant facts, not only shewing the grossest mismanagement, but creating a strong reason for believing that the Company was little else than a bubble and a juggle, and that it commenced with scarcely any available capital whatever. These facts, in connexion with the others above adverted to, appear to us, beyond all question, to call into exercise the jurisdiction of a Court of Equity for the purpose we have above described. An injunction would probably lead to an immediate acquiescence of the Consulting Committee in the desires of the British Shareholders for an amended system of management, which we apprehend is their chief aim.

It has been suggested, that a proceeding might be taken on the part of the English Shareholders against one of the public officers of the Company, under the 6th George IV. The ninth section of that Act is the only one that could apply to it, for the tenth relates to proceedings closed by decrees or judgments and to liabilities upon them, and not to proceedings in their commencement or prosecution. It is quite plain that the tenth section, and the words, "notwithstanding such person or persons may "happen to be Member or Members of such society or "co-partnership," contemplated proceedings or dealings not growing out of the partnership, but existing in such a way that, but for the partnership, they would have enabled the Company to sue the party, or the party to sue

creating or aiding a power in the Consulting Committee to make a call without the sanction of a previous Meeting.

The call being illegal, it follows that the Committee have no right to declare a forfeiture of the shares.

The rights of the English Shareholders are in our opinion clear. There is much difficulty in applying a remedy.

A remedy can only be obtained in a Court of Equity; for the Consulting Committee having refused to allow any of those resisting the calls to interfere for the convening of a Meeting, no mode exists for righting the English Proprietors under the deed, and they cannot prevent, by any proceeding at law, the Committee from declaring a forfeiture, and subsequently disposing of these shares to others, and recognizing them as partners in the Bank.

In resorting to a Court of Equity, the difficulty is at once presented, that in questioning the validity of the call, those Members are directly interested in sustaining it who are not prejudiced by it, namely, all *but* the British Shareholders. Their interest in upholding the call would in itself render it necessary to make them parties to the suit; but, independently of that, a Court of Equity will not interfere to carry on a partnership, and the dominion of the present Consulting Committee, whom the English Shareholders must seek to restrain from the management of the concern, and to appoint a Manager in their room, can only be obtained as relief auxiliary by winding up the concern to that of a dissolution by a decree of the partnership. For this purpose all the partners must be parties to the suit.

The vast multitude of partners must necessarily make such a suit most unwieldy and expensive, if prosecuted to a decree. The number of probable abatements would,

in all likelihood, postpone to an indefinite period the termination of such a cause. We think, however, that the hazard of a declaration of forfeiture of the shares is one so imminent and pressing, that the English Shareholders, if they do not choose to abandon their shares, ought to file such a bill as we have described, making all the partners parties, and praying a dissolution, an account, and a manager or receiver.

There are abundant facts, not only shewing the grossest mismanagement, but creating a strong reason for believing that the Company was little else than a bubble and a juggle, and that it commenced with scarcely any available capital whatever. These facts, in connexion with the others above adverted to, appear to us, beyond all question, to call into exercise the jurisdiction of a Court of Equity for the purpose we have above described. An injunction would probably lead to an immediate acquiescence of the Consulting Committee in the desires of the British Shareholders for an amended system of management, which we apprehend is their chief aim.

It has been suggested, that a proceeding might be taken on the part of the English Shareholders against one of the public officers of the Company, under the 6th George IV. The ninth section of that Act is the only one that could apply to it, for the tenth relates to proceedings closed by decrees or judgments and to liabilities upon them, and not to proceedings in their commencement or prosecution. It is quite plain that the tenth section, and the words, "notwithstanding such person or persons may "happen to be Member or Members of such society or "co-partnership," contemplated proceedings or dealings not growing out of the partnership, but existing in such a way that, but for the partnership, they would have enabled the Company to sue the party, or the party to sue

CASE,

WITH

OPINION OF R. B. WARREN, ESQ.

AND

DAVID R. PIGOT, ESQ.

IN RE AGRICULTURAL AND COMMERCIAL BANK OF IRELAND.

SEE first case submitted to you, left herewith, upon which you and Mr. Pigot gave the following joint opinion:

"With respect to the call of the 4th of October, we "are of opinion that it was illegal. We think it cannot "be supported by the deed of 10th August 1836, even if "that deed be binding upon the British Shareholders. "It is quite clear that notice of the call was not given as "prescribed by the 69th section.

"Independently of that objection, we think (unless the "English Shareholders have adopted the deed of 1836 "subsequently to its execution) they are not in any "manner bound by its provisions. Two objections chiefly "lie to that instrument on their part. First, That the "creation of the additional stock to the amount of "£150,000, in pursuance of the resolutions of 18th "April, 23d May, and 8th June 1836, was in contra-"vention of the stipulations for the advantage of the "British Shareholders, contained in the prospectus, "namely, that shares to an amount greater than £250,000 "should not be issued in England, and that when these "should be transferred to Ireland they should not be "retransferred to England. Secondly, that no further

" calls should be made than the two first instalments " without a General Meeting convened for the purpose of " considering that matter.

" With respect to the first, we find among the papers " a letter dated in May 1836, apprizing some of the " English Shareholders of the intention to issue £150,000 " stock in addition. If they were apprized of that specu- " lation in sufficient time, and did not object to it, it " cannot be now urged with much probability of success. " With respect to the second, it is in our opinion an " unanswerable objection, on the part of such of the " Shareholders who have not adopted the deed, against " being in any manner bound by any of its provisions " creating or aiding a power in the Consulting Committee " to make a call without the sanction of a previous " meeting.

" The call being illegal, it follows, that the Committee " have no right to declare a forfeiture of the shares.

" The rights of the English Shareholders are in our " opinion clear. There is much difficulty in providing a " remedy.

" A remedy can only be obtained in a Court of Equity; " for the Consulting Committee having refused to allow " any of those resisting the calls to interfere for the " convening of a Meeting, no mode exists for righting " the English Proprietors under the deed, and they cannot " prevent, by any proceeding at law, the Committee from " declaring a forfeiture, and subsequently disposing of " these shares to others and recognising them as partners " in the Bank.

" In resorting to a Court of Equity, the difficulty is at " once presented, that in questioning the validity of the " call, those Members are directly interested in sustaining " it who are not prejudiced by it, namely, all but the

" British Shareholders. Their interest in upholding the " call would in itself render it necessary to make them " parties to the suit. But independently of that, a Court " of Equity will not interfere to carry on a partnership, " and the dominion of the present Consulting Committee, " whom the English Shareholders must seek to restrain " from the management of the concern, and to appoint a " manager in their room, can only be obtained as relief " auxiliary, by winding up the concern to that of a " dissolution by a decree of the partnership. For this " purpose all the partners must be parties to the suit.

" The vast multitude of partners must necessarily make " such a suit most unwieldy and expensive, if prosecuted " to a decree. The number of probable abatements " would, in all likelihood, postpone to an indefinite pe- " riod the termination of such a cause. We think, how- " ever, that the hazard of a declaration of forfeiture of " the shares is one so imminent and pressing, that the " English Shareholders, if they do not choose to abandon " their shares, ought to file such a bill as we have de- " scribed, making all the partners parties, and praying a " dissolution, an account, and a Manager or Receiver.

" There are abundant facts, not only shewing the gross- " est mismanagement, but creating a strong reason for " believing that the Company was little else than a bubble " and a juggle, and that it commenced with scarcely any " available capital whatever. These facts, in connexion " with the others above adverted to, appear to us, beyond " all question, to call into exercise the jurisdiction of a " Court of Equity for the purpose we have above de- " scribed. An injunction would probably lead to an im- " mediate acquiescence in the Consulting Committee in " the desires of the British Shoreholders for an amended

" system of management, which we apprehend is their " chief aim.

" It has been suggested, that a proceeding might be " taken on the part of the English Shareholders against " one of the public officers of the Company, under the 6th " George IV. The 9th section of that Act is the only " one that could apply to it, for the tenth relates to pro- " ceedings closed by decrees or judgments and to liabilities " upon them, and not to proceedings in their commence- " ment or prosecution. It is quite plain that the tenth " section, and the words ' notwithstanding such person or " persons may happen to be Member or Members of such " society or co-partnership,' contemplated proceedings or " dealings not growing out of the partnership, but ex- " isting in such a way that, but for the partnership, they " would have enabled the Company to sue the party, or " the party to sue the Company. The effect of the tenth " section, as to strangers, is to take away the necessity of " having a great multitude of parties, and as to Members " of the Company, to take away the plea in abatement. " Besides, the words are, ' all actions, suits, &c. insti- " tuted, &c. by any person or persons against such society " or co-partnership.' The suit in question, in any shape, " would be one, not against the whole Company, but by " some of the Partners against others.

" We have thought of treating the whole of the trans- " actions between the projectors of the Company, or the " Consulting Committee representing the Company on " the one side, and the British Shareholders on the other, " and whether a bill could be sustained for an account, " and a refunding of the money subscribed, disaffirming " the partnership, treating the dealings with the British " Subscribers as a fraud upon them, and seeking a return

" return of their instalments against the whole Company, " suing the public officer as a nominal defendant. Such " a suit would be perfectly novel, and would be encum- " bered with so many difficulties that we do not advise it.

" We are of opinion that the call of the 17th of October " was also illegal. It is quite plain that there was not a " legal notice of the meeting of the 17th of October. " Much of what we have stated above, as to the call upon " the British Subscribers, applies also to this call.

" It does not appear to us that the British Shareholders " adopted the deed of 10th August 1836, the inquiries of " November 1836 were naturally called for by the cir- " cumstances, and we are not aware of any express re- " cognition of the deed, or of any act inconsistent with " objecting to its provisions. What the Shareholders did " in November and December, as far as we can collect, " was equally consistent with either deed. The trans- " actions of November and December have, however, " another bearing on the case, and they certainly do go " strongly to shew that there was not then much dis- " satisfaction with the manner in which the business was " conducted. In this view, without explanation, those " transactions might certainly prejudice the case of the " Plaintiffs' in a bill.

" We are not, we fear, fully and accurately acquainted " with the facts; but so far as they appear to us, the " Shareholders must appear, when the truth is sifted, to " have been under considerable delusion and ignorance " of the real circumstances of the Company, and that " therefore those transactions could not deprive them of a " right to the interference of a Court of Equity in a suit " properly framed.

" Whether the payment of the instalments would be a " safe or prudent measure, with a view to assuming a

" dominion over the concerns of the Company, it is for " the parties to judge. It is possible that the Consulting " Committee would adopt again the course of making an " additional call; but if the call be paid, a protest will " not have any effectual operation, and the Shareholders " unquestionably cannot recover back the instalments " they shall thus pay."

In compliance with this opinion, a bill was filed by a number of the British Shareholders for an injunction to restrain the Consulting Committee from forfeiting the shares by reason of the nonpayment of the third call, and praying other relief as auxiliary to the other.

On the 4th of March the Court pronounced its order for an injunction in the terms prayed, so far as respected the forfeiting of the shares.

On the 7th of March the Consulting Committee came to the following memorandum of agreement.

" 1st. It is proposed, in order to promote an amicable " understanding, that the Board shall stand pledged to " all the Shareholders not to proceed to enforce either of " the calls for the third instalment made on the 4th and " 17th October 1836, by forfeiture of shares, as threatened " by the circulars issued by the Board in the month of " February last.

" 2dly. That the Solicitors of the Company (Messrs. " Wallace and Son) do forthwith obtain the opinions of " Messrs. Blackburne and Brooke, as to the right of the " parties who have neglected to pay either of the third " calls above mentioned, to vote at meetings of the Com- " pany.

" 3dly. That in the event of Messrs. Blackburne and " Brooke advising that such Shareholders are entitled to " vote at meetings of this Company, the same be notified " to them by circular letters, and that all proceedings by

" forfeiture, or at law or in equity, on such calls be then " abandoned.

" 4thly. That if, on the contrary, Messrs. Blackburne " and Brooke shall advise that such Shareholders cannot " legally vote at such meetings, then the Board pledge " themselves forthwith to refer all questions relating to " the legality of said calls of the 4th and 17th October " 1836, to the decision of the Right Honourable Francis " Blackburne, and Richard B. Warren, Esq., and a third " King's Counsel, to be mutually chosen by them finally " to determine the same.

" 5thly. That the Board do forthwith issue and publish " notices calling a Special General Meeting of this Com- " pany on the 20th March instant, to be held in the city " of Dublin, for the following purposes:

" 1st. Of receiving a report of all the proceedings " of the Board since the last half-yearly meeting held " on the 17th October 1836.

" 2d. To receive a statement from them of the " accounts and assets of the said Company as they " stood on the 12th day of March preceding such " meeting.

" 3d. To appoint four auditors to examine the " accounts and affairs of this Company; and for that " purpose they should be fully authorized and em- " powered to call for and require the production of " all vouchers, securities, and other documents be- " longing to the Company, and the personal aid and " attendance of all officers and other persons in their " employment, and to report thereon to the General " Half-yearly Meeting to be held on the third Mon- " day in the month of April, it being the main object " of such audit to ascertain the nature and amount of " the existing liabilities, and to estimate the available

" assets of the Company. Said Auditors to be Share-
" holders, or otherwise, at the option of said Meet-
" ing.

" 6thly. That the notices for convening such Special, " General, and said Half-yearly General Meeting, shall " embrace (amongst other things as the Board may deem " expedient) notice that the Shareholders will, according " to their unfettered discretion, consider and decide on

" 1st. The report of the Board.
" 2d. The accounts of the Company.
" 3d. The assets and liabilities of the Company.
" 4th. The report of the Auditors to be appointed
" at such Special General Meeting, and all other
" matters cognizable by such a Meeting.

" WILLIAM TILBY, Chairman, " T. M. GRESHAM,
" JOHN A. PALMER, " JAMES DWYER,
" J. CHAMBERS, " A. SAUNDERS."

Pursuant to the fifth head of the above minute a Special General Meeting was called for Monday the 20th of March last, when the following resolutions were entered into by the Shareholders then present.

" Resolved, that T. M. Gresham, Esq. do take the " chair.

" Moved by Thomas Johnston Smith of Lisburn, " seconded by Mr. Robert Forster:

" Resolved unanimously, That William Goodier of " Manchester, Robert Molloy and William Robinson of " Dublin, George Dundas and William Bell of Belfast, " Esquires, be appointed Auditors to audit the accounts, " assets, and common concerns of this Company; and, " for that purpose, they are hereby empowered and " authorized to call for and enforce the production to " them of all vouchers, books, minutes, securities, and

" other documents belonging to this Company, wherever " the same may be deposited, and to require and enforce " the aid and attendance upon them of all officers and " other persons in the charge of the affairs of this Com- " pany; and for that purpose we, the Proprietors of stock " of said Company, do expressly authorize and empower " the said Auditors to take such measures, from time to " time, as may be necessary to enable them to carry into " effect this our resolution.

" Resolved, That the requisitions of which copies have " been read to this Meeting,* two of which were delivered " on the 13th instant, one on the 15th, and one on the " 16th instant, to the Consulting Committee, be adopted " by this Meeting, and that in pursuance thereof notices " shall forthwith be inserted in three daily papers pub- " lished in London, as also two Scotch papers, convening " the half-yearly General Meeting of this Company, and " making the same not only a half-yearly General Meeting " but also an extraordinary General Meeting of this Com- " pany, for Monday the 17th day of April next, to be " held at Morrisson's Great Rooms in the city of Dublin. " The chair to be taken at eleven o'clock precisely, for " the purposes mentioned in said four several requisitions, " as also for the purposes specified in another requisition " now delivered to the Chairman of this Meeting, and " signed by the requisite number of Shareholders.

" Moved by Mr. R Sadler, junior, seconded by Mr. W. " Boyd of Ballinasloe:

" Resolved, That Mr. Norris's case be referred for " ultimate decision to Mr. R. Sadler, junior, Mr. T. M. " Gresham, and Mr. William Bell, Mr. Norris agreeing " to abide the result.

* The requisitions here referred to were before submitted to Mr. Warren.

" Moved by Mr. Arbuthnot Emerson, seconded by Mr. " Forster:

" That the thanks of this meeting are due, and hereby " given to Mr. Morrisson, for granting the use of his " Rooms on the present occasion free of all expense.

" Wm. Hughes, Secretary. " T. M. Gresham, Chairman.

" Mr. Gresham having left the chair, and Mr. Emerson " having been called thereto, it was resolved by acclama- " tion,

" Resolved, That the thanks of this meeting are due, " and are hereby cordially given to Thomas Michael " Gresham, Esq. not only for his dignified and impartial " conduct in the chair this day, but for his honourable " and indefatigable exertions as a Director, since his (to " us most fortunate) election as such in November last.

" Wm. Hughes, " Secretary." " Arbuthnot Emerson.

Those resolutions were signed by the Chairman and the Secretary to the Company, and it was arranged with the latter that we should send the next morning a form of notice to be published pursuant to the resolutions.—(See report of the proceedings at the Meeting in Evening Mail of 22d of March, left herewith.)

On the following morning a draft of the notice calling the half-yearly and General Meeting for the 17th April was sent to the Consulting Committee for their approval, with a letter, of which the following is a copy:

" 43, Dame Street, 21st March 1837.

" Gentlemen:

" Herewith I send you the requisition delivered to the " Chairman of the Meeting yesterday, and signed by the

" requisite number of Shareholders, in which they request " that, in the notice calling the General half-yearly Meet- " ing to be held on Monday the 17th April next, you will " declare the same to be as well a General half-yearly " Meeting as an extraordinary General Assembly of the " Proprietors, to take into consideration the ordinary " business of such half-yearly Meetings, and also to con- " sider and decide upon the present state of the Company " and the other purposes therein mentioned.

" I also send you a draft of a proposed notice, calling " the above Meeting, for your approbation; and if you " approve thereof, I have to request that you will forth- " with have it forwarded for insertion in the proper En- " glish and Scotch papers, as provided for by the rules " and regulations of the Company; and in order to pre- " vent any miscarriage on this subject, I beg you will let " me know, per bearer, whether you approve of the no- " tice, and that you will have it sent for publication in " due time.

" Your very humble servant,

" PEIRCE MAHONY."

The Committee refused to adopt the draft notice—(See Secretary's letter, of which the following is a copy):

" Sir: " 22d March 1837.

" I am directed by the Board of Directors to acknow- " ledge receipt of your favor 22d instant, and to state that " they cannot sanction or recognise the notice you have " enclosed, and will, to the best of their judgment, dis- " charge their duty to the Proprietors in general.

" I am, sir, your obedient servant,

" WM. HUGHES.

" To Peirce Mahony, Esq."

The Committee having so refused to call a Meeting pursuant to the terms of the notice, which was in accordance with the resolution passed at the Meeting, it was deemed prudent to get Mr. Gresham to sign the notice, treating him as *an acting* officer for that purpose,* authorized by virtue of the resolution passed at the Meeting, and the notice was accordingly published in the Dublin papers, London Gazette, two daily London papers, and one in Glasgow and Edinburgh,† and the names of the several persons (requisitionists) who required the Meeting are subjoined, with the number of shares held by each.‡—(See Saunders's paper of the 27th March, with the notice.)

Should this notice not be legal, there is no means for thirty-one or more Proprietors of the Bank to enforce a call of a General extraordinary Meeting or Assembly; for it may happen (as it has in the present case) that requisitions to the Consulting Committee may be disregarded, as well as a requisition addressed to the Secretary under the 31st clause of the deed of 1st December 1834, and the Proprietors would consequently be without a remedy. We forwarded three requisitions to the Consulting Committee to call a General Extraordinary Meeting, which they disregarded; and we also sent one to Mr. Hughes, their secretary, which was treated in the same manner.—(See copies requisitions left herewith, Nos. 1, 2, and 3.)

We delivered another requisition on the 16th March, addressed to the Consulting Committee.—(See copy, No. 4.)

The five requisitions referred to in the notice published are, the above-mentioned four, and the one that was

* See 29th clause of deed of 1836.

† See same clause.

‡ See 30th clause of ditto.

signed on the 20th at the Special Meeting.—(See the 5th requisition, also sent herewith, and No. 5.)

We sent a circular to each Member of the Consulting Committee, with a paper containing the notice so signed by Mr. Gresham (and to which Mr. Arbuthnot Emerson's name was afterwards added, under his individual authority, to add his name also), but in no instance has any one returned an answer in the affirmative.—(See copy Circular, No. 6.)

The notice which we called upon the Committee to publish was considered merely a fulfilment of the minute of the 7th March, before referred to, and the resolutions passed at the Meeting on the 20th March.

The Committee, after their refusal to adopt the form of notice sent them, published a notice dated 29th March last, calling the stated half-yearly Meeting for the 17th April.—(See Dublin Evening Post of 30th March, left herewith.)

Your attention is requested to the form of this notice, particularly as to whether it embraced or authorized the discussion of all subjects contained in the minutes of the 7th March, and the resolutions of the Shareholders at the Meeting on the 20th March, observing that it *is limited* to a half-yearly Meeting; and it will be observed that, as it may suit the purposes of the Committee, they act, or refuse to act, under the deed of 1836 or 1834, so as to give them greater facilities. For instance, the 39th clause of the deed of 1836 requires the notice of the half-yearly Meeting to be published twenty-one days before the Meeting in the English and Scotch papers, and only ten in the Irish papers;* whereas the 33d clause of the deed of 1834 requires the notice (if the Committee shall so direct) to be

* See 27th clause of the deed of 1836, which appoints the half-yearly General Meeting for the third Monday in April.

given in three daily papers in London, ten days only before the meeting;* and for the last and then intended meeting, there was not time, between the date of the notice (the 29th March) and the day of meeting, to give the twenty-one days' notice, as regards the papers in Scotland and England.

The notice published by the Shareholders specified the particular objects of the meeting;† that published by the Committee, concluded with the words "for the purpose "of considering *all other matters cognizable by the said "Meeting.*"‡ It is proper to state, that although at the meeting of the 20th March, the meeting unanimously appointed five Auditors, including one (Mr. Molloy) named by the Committee, the Committee have since refused to adopt that resolution, and insisted on excluding Mr. Bell from being one.

By the notice of the Committee it is intimated, "that "all proxies, forms, or authority to vote by proxy, "granted, given, or perfected, or to be granted, given, "or perfected by Shareholders, must be delivered in at "the office of the Company, 63, Fleet Street, Dublin, "two clear days at least previously to the General Meeting, General Assembly, or Extraordinary General Assembly, at which such are sought or intended to be used "(exclusive of Sundays), to be examined, checked, and "compared, otherwise no proxy votes, or authorities to "vote by proxy, will be allowed to be acted on or be "deemed valid.

"Signed, by order of the Board,

"Wm. Hughes, Secretary."

* See 31st clause of deed of 1836.

† See clauses 29 and 94 of same deed.

‡ See clauses 33 and 96 of deed of 1834.

This bye-law, if in existence (of which we before had not notice), seems to be enforced, in order to entangle the Shareholders, and, if valid, will very materially embarrass them. See clause 89 of deed of 1834, and 87 of deed of 1836, authorizing a General Board of Directors, or the Consulting Committee *specially called for that purpose*, to make whatever bye-laws and rules they shall think proper, *provided the same be not inconsistent with, or repugnant to, the fundamental principles or constitution of the Company.**

The clause 155 of the deed of 1834, and 149 of the deed of 1836, authorizing votes by proxy, do not stipulate or seem to contemplate any rule or bye-law such as referred to, by which it is required, "that all proxies "shall be delivered in two clear days (exclusive of Sun-"days) before a General Meeting, General Assembly, "or Extraordinary General Assembly, to be examined, "checked, and compared, otherwise no proxy votes, or "authority to vote by proxy, will be allowed to be acted "on or be deemed valid."

This bye-law would materially affect the due exercise of the Shareholders' privilege, as all the proxies must have been delivered to the Committee on Thursday the 13th of April, and thereby abridge the time for giving proxies.

You will observe, that the notice published by the Committee is (amongst other things) "for the purpose of "considering upon, or further considering and agreeing "to, or dissenting from, the propriety of making, em-"powering, or sanctioning a third call, in the sums or "proportions pointed out by the deeds of settlement,

* We understand the Consulting Committee to have recently passed this bye-law, but we doubt whether at a Meeting specially called for that purpose, as the clause would seem to require, as no notice of such a Meeting has been seen.

"either or both of them, of the Company, upon the Irish "shares or stock of the Company, in order to remove all "doubts upon the sufficiency or validity of the call "heretofore made upon the said Irish stock or shares, in "pursuance of the resolution of the half-yearly General "Meeting held on the 17th of October last."

Upon a case submitted to you respecting the regulations for and the powers of the meeting of the 17th April you gave the following opinion:—

"I do not think the notice signed by Mr. Gresham "and Mr. Emerson could be held sufficient for an "Extraordinary General Meeting under the provisions "of the deeds of partnership, not having been signed by "the Manager, Secretary, or other acting officer thereto "empowered. I do not think any such Meeting could "be convened under the provisions of the deeds, except "as I have above stated; but I am of opinion the Con-"sulting Committee and the Secretary are clearly acting "against the provisions of the deeds, in declining to "convene an Extraordinary General Meeting at the "requisition of the specified number of Shareholders.

"The notice published by the Consulting Committee "*is not*, in my opinion, in full accordance with the "minutes of the 7th March; but I think it will be "competent for the Shareholders to bring forward for "discussion, at the approaching Meeting convened for "the 17th April, the several matters referred to in the "notice signed by Mr. Gresham, such matters being, in "my opinion, within the meaning of the 31st section of "the deed of 1836, by which it is provided that a General "Assembly shall have full power, in all cases not other-"wise provided for by the deeds of partnership, to super-"intend, regulate, and control all the affairs and concerns "of the Company, and there not being any clause in the

" deeds restricting the matters to be discussed at any " half-yearly General Assembly; and as the third Monday " in April (which will be on the 17th) is expressly fixed " by the 27th section for the Spring half-yearly Meeting, " no objection can be raised to its competency by reason " of any defect in the publication of notices.

" In my opinion, the Consulting Committee had not " authority to make such bye-laws, the effect being to " restrict the right of voting as fixed by the 149th section, " and such restriction not being, in my judgment, within " the provisions of the 87th section, which gives authority " to make bye-laws.

" I think the Meeting will have power to consider " whether the call was legal or not. But even if the " Shareholders present should resolve that it was so, such " resolution would not have the effect of giving any " validity: for the only result would be, that in such case " the Consulting Committee might be considered free " from blame in acting on such resolution.

" I would advise the Shareholders who are referred to " in this case to suspend any contemplated proceedings " until after they shall have seen the result of the " approaching Meeting of 17th April.

" For the reasons mentioned, in reply to the second " query, I do not think the validity of the meeting can " be affected by any defects in the manner of publishing " the notice."

Acting on your opinion, it was determined to make the greatest exertion to get effective resolutions passed at the Meeting of the 17th of April, treating the Meeting as an open one, to discuss and decide upon the several matters in the notice signed by Mr. Gresham.

On Saturday the 15th of April, deputations assembled at Gresham's Hotel from the following, amongst other

" desired to ask your Lordship whether, in case you are " elected to the Chair, you will be guided by the opinion " of Mr. Warren, as contained in that letter.

" I am, my Lord,

" Your humble servant,

" CHAS. J. KNOX, Chairman."

" The Right Hon. the Lord Mayor."

To which his Lordship replied as follows:—

" Mansion House, April 15th 1837, half-past 5.

" Sir:

" I am this moment in receipt of your favour of this " date, enclosing a printed report of Mr. Warren's opinion, " and requesting to know if, in case I should be elected " Chairman of the Meeting on Monday, I will be guided " by said opinion. In reply, I beg to state that, should I " be elected, I shall be entirely governed by the decision " of the Meeting, which I trust will be a calm and delibe- " rate assembly, having no object in view but the general " welfare of the concern; and to such I, as an individual " member of the Board, shall most cheerfully submit.

" I have the honour to be, Sir,

" Your most obedient servant,

" WM. HODGES."

" To Chas. J. Knox, Esq."

The following resolutions were passed at the meeting on the 17th April:—

" Upon the motion of the Lord Mayor, seconded by " Thomas Michael Gresham, Esq., Jonathan Pim, Esq., " was called to the Chair.

" The report of the Consulting Committee having been " read and entered on the minutes,

" It was, on the motion of John Bates, Esq, seconded " by Benjamin Sadler, junior, Esq.

" Resolved, That the Auditors be paid Five guineas " each per day, they paying their own travelling " expenses.

" The report of the Auditors having been read (of " which a printed copy is sent herewith),

" It was proposed by Isaac Comerford, Esq. of Gal- " way, and seconded by James Barnett, Esq. of Carrick- " fergus, and

" Resolved, That the report of the Auditors now read " be received and entered on the minutes of this Meeting, " and printed for the use of the Shareholders.

" It was proposed by John Bates, Esq. of Belfast, " and seconded by Charles J. Knox, Esq. of Coleraine, " and

" Resolved, That it appearing from the calculations in " the report of the Auditors presented to this Meeting " and entered on the minutes of our proceedings, and " now confirmed by the calculations of William Bell, " Charles J. Knox, M. J. Barry, R. Bond, and Paul " Twigg, Esqrs. (being five Shareholders of this Com- " pany), that more than one-fourth of the paid up capital " of this Company has been actually lost; that a Com- " mittee of twenty-one Proprietors be forthwith appointed " by ballot, pursuant to the fifth clause of the deed of " settlement of 10th August 1836, to inquire into the " truth and correctness of such loss, and report thereon " at the next meeting of this Company.

" On the motion of Benjamin Sadler, jun., Esq. of " Belfast, seconded by John Potts, Esq. of Belfast, it was

" Resolved, First, That the Proprietors at this Half- " yearly General Assembly have full power, in all cases " not otherwise specially provided for by the deeds of

" settlement, to regulate and control all the affairs of " the Company.

" Secondly, That, in accordance with the 32d clause " of the deed of 10th August 1836, we do hereby suspend " from his office each of the following Members of the " present Consulting Committee, *viz.*

" JAMES DWYER,	" DESPARD TAYLOR,
" PHILIP JONES,	" ARTHUR LLOYD SAUNDERS,
" J. A. PALMER,	" JOHN CHAMBERS,
" HENRY WATSON,	" D. H. MC.ADAM :

" This Meeting being of opinion that they have been " guilty of great neglect and mismanagement during their " continuance in their office as Directors of this Com- " pany.

" Thirdly, That the remaining Committee do forthwith " convene an Extraordinary General Assembly, for the " purpose of confirming or removing the suspension of the " foregoing Members of the Consulting Committee, and " of either dismissing or removing them from their office, " or re-establishing them in their office, and also for the " purpose of electing eight other qualified Proprietors in " their place, as Directors and Members of the Consulting " Committee, in the event of the suspension of the eight " foregoing Members being confirmed and their being " dismissed and removed from their office.

" Fourthly, That the deeds of settlement of this Com- " pany be altered in the following particulars:

" That in the event of the Consulting Committee, the " Manager, or the Secretary of the Company for the time " being, declining or refusing, or for ten days omitting " to call an Half-yearly Extraordinary or Special or " Adjourned General Assembly of this Company, pur-

" suant to the deeds of settlement, on the requisition of " thirty-one or more Shareholders holding 500 shares, " then it shall be lawful for any thirty-one or more mem- " bers holding such or similar shares to convene such " Half-yearly Extraordinary or Special Adjourned Gene- " ral Assembly, which shall have the same powers and " authorities as if convened by said Consulting Commit- " tee, Manager, or Secretary, for the time being thereto " empowered.

" That the seventh clause of the deed of the 10th day " of August 1836 be varied, by enabling thirty-one or " more Proprietors holding 500 or more shares (instead " of 2,000 or more shares of Five pounds each, or 400 " shares of £25 each, or 800 shares of £10 each), to call " *for or obtain* an Half-yearly Extraordinary or Special or " Adjourned General Assembly.

" That said deed of 10th August 1836 be altered, so as " to provide that, notwithstanding anything therein con- " tained, it shall not be lawful for the Consulting Com- " mittee to make any further call on the Proprietors, " without the sanction of a General Assembly of the Pro- " prietors duly convened for that purpose.

" That clauses 12, 13, and 14 of the said deed be " altered, so as to enable Proprietors to vote for and be " elected as Directors, without reference to the time at " which they may have been Shareholders; and for that " purpose the 13th and 14th clauses of said deed shall be " struck out.

" That when, pursuant to the 32d section of said deed, " any member of the Directory or Consulting Committee " for the time being shall have been suspended from his " office, it shall be lawful for the Proprietors assembled " at the Meeting when such suspension shall take place, " forthwith to elect one or more qualified Shareholders

" Member or Members of the said Committee, in the " place or places of the person or persons who may be " suspended.

" That the 28th clause of the said deed be altered, so " as to give power to an Half-yearly Meeting, Extraor- " dinary, or Special, or Adjourned General Assembly, to " adjourn such Meeting to a future day, or from day to " day, without giving notice of any such adjournment as " required by the said 28th clause.

" That pursuant to the Prospectus issued, and on the " faith of which the English Shareholders became mem- " bers of this Company, it shall be lawful for any British " Shareholders possessing 200 shares of the Company's " stock on which £10 per share shall have been paid, to " sit and vote at the Board of, and as one of the Consult- " ing Committee.

" Fifthly, That the draft of the Bill to be introduced " into Parliament, and prepared by Mr. Mahony, be " adopted by this Meeting, and the Right Honourable " the Chancellor of the Exchequer, Daniel O'Connell, " Esq. M.P., James Emerson Tennant, Esq. M.P., and " Daniel Callaghan, Esq. M.P., be respectfully requested " to take charge of the same.

" The foregoing resolutions having been put from the " Chair, the Chairman declared that they were carried " by a majority of the Meeting. A ballot was then " demanded and agreed to, when Mr. Pim requested (on " account of ill health) permission to leave the chair, and " that Thomas Michael Gresham, Esq. should be called " thereto:

" It was, on the motion of Charles J. Knox, Esq. of " Coleraine, seconded by John Bates, Esq. of Belfast,

" Unanimously Resolved, That Thomas Michael Gre- " sham, Esq. do take the Chair.

" Upon which (at the request of Mr. Jonathan Pim) " he directed the ballot to proceed upon all the resolu- " tions which were so carried by a majority of voices, and " for the purpose of electing a Committee of twenty-one " Members, pursuant to the resolution moved by Mr. " Bates.

" It was duly proposed and seconded, and Resolved, That " Mr. Maley, Mr. Carbery, Mr. William Smith, *Mr.* " *Hugh Halliday, Mr. William Bell,* and *Mr. William Knox,* " be appointed Scrutineers to take the votes by ballot.

" Three of the Scrutineers* whose names are *under-* " *lined,* afterwards reported to the meeting that *all the* " *resolutions proposed by Mr. Bates or Mr. Sadler, together* " *with the Committee of twenty-one,* referred to in the " foregoing resolutions, were carried by two thousand " four hundred and fifty-nine votes given by Proprietors " duly qualified, and that no votes were tendered " against such resolutions or the appointment of such " Committee.

" Upon the motion of Charles J. Knox, Esq., seconded " by Hugh Magill, Esq. of Belfast, it was

" Unanimously Resolved, That the report of the Scru- " tineers now read be received and adopted, and that the " following Shareholders, *viz.* Michael Joseph Barry, " Cork; James Beale, Cork; William Bell, Belfast; " Robert Bond, Londonderry; James Blair, Belfast; " Hugh Collum, Enniskillen; Austin Cooper Chadwick, " Tipperary; Isaac Comerford, Galway; Hugh Halli- " day, Belfast; William Richard Kearney, Waterford; " Charles J. Knox, Coleraine; Charles Langley, Nenagh; " John Meaghir, Thurles; Hutchinson Mc Linch, Kin- " sale; William Frederick Mc Culloch, Omagh; John

* Three of the Scrutineers only made this report, the others retired from the Meeting- (See fol. 31).

" Norris, Omagh; Joseph R. Pim, Dublin; Edward " Roberts, Waterford; Benjamin Sadler, junior, Belfast; " John Thorpe, Manchester; Paul Twigg, Dublin; were " duly elected as the Committee of twenty-one, to carry " into effect the foregoing resolutions, to further audit " the affairs of this Company, and that the report of the " Auditors and other proceedings of this Meeting be " referred to them.

" It was moved by Charles J. Knox, Esq., Coleraine, " and seconded by Hugh Magill, Esq. of Belfast, and

" Unanimously Resolved, That the Thanks of this Meet- " ing are due and hereby given to Jonathan Pim, Esq., " for his dignified and impartial conduct in the Chair " this day.

" THOMAS M. GRESHAM, Chairman.

"Mr. Gresham having left the Chair, and Hugh Magill, " Esq. of Belfast, being called thereto, it was moved by " Edward Roberts, Esq. of Waterford, and seconded by " Robert Vance, Esq. of Dublin, and

" Resolved by acclamation, That the thanks of this " Meeting are due and hereby given to Thomas M. " Gresham, Esq., not only for his dignified and impartial " conduct in the Chair this day, but also for his invalu- " able services to the Proprietors of this Company.

" HUGH MAGILL, Chairman."

(For a full report of the proceedings at the above Meeting, see Dublin Evening Post of 19th April, left herewith.)

The following protest was inserted in Saunders's Newsletter of the 18th April:

" NOTICE. We, the undersigned Members of the " Board of Directors and Consulting Committee, having " witnessed with great pain the violent and improper

" proceedings of Shareholders, who by tumult and clamour " pressed on the Chairman (Mr. Jonathan Pim) resolu- " tions quite beyond the power of the Meeting to enter- " tain, and without allowing any fair discussion, and, " according to the laws of the Company, declined to " divide upon the very reasonable proposition of Hugh " Magill, Esq. of Belfast, and seconded by William " Smith, jun. Esq. of York,* or allow same to be " debated, assuming to adopt resolutions after the " Chairman had retired from the Meeting, totally at " variance with the laws of the Company or the adver- " tisement convening the Meeting; and being determined " not to yield to any violation of the deed of settlement, " we hereby protest against the proceedings, except the " report made by the Board, the reception of the Auditors' " report, and the reply and comments thereupon; and " we explicitly declare, that the illegal and violent " conduct pursued by the parties referred to will render " us more determined, as Shareholders and Members of " the Board, in maintaining the just rights of the Pro- " prietors and upholding the Company, although most " anxious to meet any reasonable proposition tending to " extinguish dissent and promote unanimity.

" Wm. Hodges, Lord Mayor, " A. Saunders,
" Henry Watson, " Phillip Jones,
" James Dwyer, " Jno. A. Palmer.

" Monday evening, April 17, 1837."

A meeting of Shareholders was held on Tuesday in Dawson Street, in consequence of the above protest, and

* The proposition made by Mr. Magill was to the effect, that six Trustees should be appointed, three by the Committee and three by the Shareholders, in whom the property should be placed; that the stock should be valued as it stood, and the Shareholders should be paid the extent it realised.

a letter, of which the following is a copy, was received from the Consulting Committee:

" At a Meeting of the Consulting Committee, held on " the 18th April 1837, Phillip Jones, Esq. in the Chair:

" Present, T. M. Gresham, Despard Taylor, Jno. " Chambers, Jno. A. Palmer, P. Kelly, James Dwyer:

" Resolved, That with a view, if practicable, to lead " to an amicable termination of the differences existing " between the Shareholders, we do hereby state our anxiety " and readiness to carry into effect the resolutions pro- " posed by Mr. Hugh Magill of Belfast on yesterday, " upon the basis contained in the resolution, and the two " following ones emanating therefrom; and with this " view we do propose, that mutual trustees (three on " each part) be appointed, in whom shall be vested the " amount of bills and cash credit account stated by the " Auditors' report, to be held as security, as realized, for " the payment to dissentient parties wishing to retire " within one fortnight of such rateable value of the " shares as the state of the assets may warrant upon a " competent valuation. We make this proposition, " subject as is desired to the opinion of two Counsel " mutually chosen as to the legality thereof, pledging " ourselves, if further deemed necessary, to convene a " public meeting to sanction the arrangement; and " further, that the Board shall bind themselves (as pro- " posed yesterday) not to allow or create any new liabili- " ties until the dissentients are paid off and assignments " recorded, pursuant to the provisions of the Deed of " Settlement, and Act 6 Geo. IV. cap. 42.

" PHILLIP JONES, Chairman.

" 63, Fleet Street, 18th April 1837."

The following answer was sent to such letter:—

"At a Meeting of several of the Shareholders of the "Agricultural and Commercial Bank of Ireland,

"A letter was read, signed Phillip Jones, Chairman, "dated Fleet Street, 18th April 1817, and purporting to "have been entered into at a meeting of the Consulting "Committee of the Agricultural and Commercial Bank "of Ireland (present Philip Jones, Chairman, and Messrs. "T. M. Gresham, Despard Taylor, John Chambers, John "A. Palmer, P. Kelly, and James Dwyer); It was moved "by Dr. Langley of Nenagh, and seconded by Isaac "Comerford, Esq. of Galway, and

"Unanimously Resolved, That the Shareholders of the "Agricultural and Commercial Bank of Ireland having, "at their half-yearly Meeting held yesterday, suspended "from the office of the Consulting Committee, Mr. Jones, "whose name appears as Chairman, and Messrs. Despard "Taylor, John Chambers, John A. Palmer, and John "Dwyer, who appear to have been present when this "resolution was entered into, and only two of the Con-"sulting Committee named (Messrs. Gresham and Kelly) "appearing to be present, while it is necessary that at "least three Members of the Committee should join in "any act, the Shareholders now assembled cannot receive "or enter upon the consideration of this resolution, as "they would thereby be parties to the illegal conduct of "the suspended Members, who deny the right of the "Shareholders to enter into the resolutions passed at the "half-yearly General Meeting.

"Robert Forster, Chairman."

The following are the resolutions passed at the Meeting of the 18th April:—

"A meeting of the Shareholders of the Agricultural "and Commercial Bank of Ireland took place this day

" at No. 13, Dawson Street, Robert Forster, Esq., of " Springfield near Dungannon, in the Chair.

" It was moved by John Mansergh of Tipperary, Esq., " and seconded by Mr. Alderman Carew of Waterford, " and

" Unanimously Resolved, That we are determined, by " every means in our power, to assert our rights, and " enforce the resolutions passed at the half-yearly General " Meeting of Proprietors held at Morrison's Great Rooms " yesterday, and we hereby call upon the remaining Di- " rectors of our Board, namely, the Right Hon. the Lord " Mayor, Thomas Michael Gresham, Arbuthnot Emer- " son, William Tilly, Jonathan Pim, Andrew Walker, " and Patrick Kelly, Esqrs., to carry same into effect by " every legal means, and, if necessary, by an appeal to " Parliament; and we caution all inspectors, managers, " and other persons, from dealing in the shares of this " Company, or otherwise with or acting under the autho- " rity of any of the following gentlemen, who were then " suspended from their office of Directors of this Bank, " *viz.* James Dwyer, A. L. Saunders, P. Jones, J. A. " Palmer, Despard Taylor, D. H. M'Adam, Henry " Watson, and John Chambers.

" It was, on the motion of Mr. John Crosswell of " Londonderry, and seconded by Mr. Thomas Macklin " of Loughrea,

" Resolved, That it is the express wish of this Meet- " ing, that our remaining Board of Directors do forthwith " proceed to reduce the expenses of this establishment to " the lowest amount consistent with the safety of our " property.

" It was then Resolved, That the following gentlemen, " namely, Robert Burd, Isaac Comerford, John Mansergh, " John Kelly, C. Langley, Thomas Kinley, Benj. Sadler,

" jun., Charles J. Knox, and Thomas Carew, Esqs., do " form a Deputation to deliver to the Consulting Com- " mittee a copy of the following document:—

" To the Consulting Committee of the Agricultural " and Commercial Bank of Ireland;

" Gentlemen:

" We, the undersigned, being a Deputation appointed " by the Shareholders, now at 13, Dawson Street, desire " to have an interview with your Board, for the purpose " of ascertaining whether or not the eight gentlemen sus- " pended as Directors by the Meeting held yesterday, " will or will not act in accordance with the expressed " wishes of the Proprietors, by abstaining from any fur- " ther exercise of their late office, until they shall be either " re-elected or their suspension removed."

" The Deputation having accordingly waited on the " Board, returned with a written answer from four of the " Consulting Committee who had been so suspended, *viz.* " Mr. Dwyer, Mr. J. A. Palmer, Mr. P. Jones, and Mr. " J. Chambers, to the effect following from each, 'declin- " ' ing the proposition made, not considering the resolu- " ' tion as expressing the opinion of the Proprietors, and " ' considering the meeting had no power to *entertain the* " ' *subject*, and that, in obeying the request, he would be " ' violating his duty to the Proprietors.' Mr. Despard " Taylor gave a verbal answer, 'declining to resign, as " ' he thought the proposition came from Mr. Mahony.' " Mr. A. L. Saunders also gave a verbal answer, 'declin- " ' ing to accede to the demand made by the Deputation.' " Mr. Watson and Dr. McAdam were absent from the " Board.

" A letter was read, signed 'Philip Jones, Chairman,' " dated Fleet street, 18th April 1837, and accompanying

" a *resolution** purporting to have been entered into at a " Meeting of the Consulting Committee of the Agricul- " tural and Commercial Bank of Ireland, at which were " present, Philip Jones, Chairman, and Messrs. Thomas " Michael Gresham, Despard Taylor, John Chambers, " John A. Palmer, Patrick Kelly, and James Dwyer; " after which it was moved by Dr. Langley of Nenagh, " and seconded by Isaac Comerford, Esq. of Galway, " and

" Unanimously Resolved, That the Shareholders of the " Agricultural and Commercial Bank of Ireland having, " at their half-yearly Meeting held yesterday, suspended " from the office of Member of the Consulting Committee " Mr. Jones, whose name appears as Chairman, and " Messrs. Despard Taylor, John Chambers, John A. " Palmer, and James Dwyer (who appeared to have been " present when the resolution read to this Meeting was " entered into), and only two Members of the Committee, " namely, Messrs. Gresham and Kelly, appearing to have " been present, while it is necessary that at least three " Members of the Committee should join in any acts, the " Shareholders now assembled cannot receive or enter " upon the consideration of said resolution, as they would " thereby become parties to the illegal conduct of the " suspended Members of the Consulting Committee, who " deny the right of the Shareholders to have entered into " the resolutions passed at their half-yearly General " Meeting held yesterday.

" Robert Forster, Chairman."

" Mr. Forster having left the chair, and Mr. Norris of " Omagh being called thereto, it was, on the motion of " Mr. Bates, and seconded by Mr. Robinson, and

* See resolution, fol. 72 ante.

" Unanimously Resolved, That the thanks of this Meet-
" ing are due, and hereby given to Robert Forster Esq.
" for his dignified and impartial conduct in the Chair.

" Wm. Norris, Chairman."

(For a full report of the proceedings of this Meeting, see Dublin Evening Post of Friday, 21st April 1837.)

It having been determined that the Committee of twenty-one, elected on Monday, should proceed to ascertain whether one-fourth of the capital was lost in the manner pointed out by the 5th clause of the deed of 1836, they met the following day at Gresham's to arrange their proceedings. The following is a statement of what took place thereat.

" Gresham's Hotel, Dublin, 11 o'clock,
" 19th April 1837.

" At a Meeting of the Committee of twenty-one ap-
" pointed by the half-yearly Meeting of the Shareholders
" in the Agricultural and Commercial Bank of Ireland,
" held at Morrison's Hotel on the 17th instant, to inquire
" further into the state of the affairs of the Company, &c.

" Present, Benjamin Sadleir jun. in the Chair, John
" Thorpe Austen, C. Chadwick, Hugh Collum, John
" Norris, Hutchinson M'Clinch, John Meagher, Isaac
" Comerford, William Richard Kearney, Michael J.
" Barry, Charles Langley, Edward Roberts, and William
" Bell.

" After conferring some time together, it was

" Resolved, To proceed to the Board in Fleet Street, to
" demand access to the books, &c. of the Company, and
" the necessary authorities over their officers, and to
" adopt such other measures as might then appear ad-
" visable, in pursuance of the object of our appointment."

The whole of the foregoing Members of the Committee met in Fleet Street about twelve o'clock, and were subsequently joined by Charles J. Knox, another Member; and Mr. Thorpe having been then requested to act as Chairman, sent his name into the Board-room for Mr. Gresham. Two of the gentlemen were proceeding from the outer office into the room, after having first knocked at the door, but were forcibly pushed back and prevented from entering, threatened with being shot, and pistols produced by Mr. Dwyer; and Mr. Saunders and Mr. Dwyer attempted to strike them both with a lignum vitæ rule. A number of the clerks rushing to the door, and using gross and insulting language without having received any provocation. The Lord Mayor and Mr. Emerson, after a short delay, came out of the Board-room and conducted them to a private apartment, stating that they would return to the Board and suggest the propriety of a Deputation from the Board visiting them, and they retired for the purpose; but before they left them they were informed that the Deputation could not recognise any of the Directors who had been suspended.

After more than an hour the Lord Mayor, Messrs. Emerson, Kelly, and Gresham came back as a Deputation from the Board, to receive any communication they had to make, and a copy of the following memorandum was given to them, with a list of the Members of this Committee now present,* *viz.*

"That the gentlemen were part of the Committee of "twenty-one appointed at the Meeting of the 17th in-

* Upon this occasion several Members of the eight who were suspended, threatened to use fire-arms and other violent means, to resist the Committee of twenty-one from examining the books and accounts of the Bank. See report of proceedings before the Magistrates at College Street, in the Morning Register of the 21st April, left herewith.

" stant, pursuant to the deed of settlement, to inquire into " the Auditors' report, and came to demand from the " Members of the Board not under suspension, full autho- " rity over all the Managers and other officers; to enforce " the production of all books, accounts, and other docu- " ments relating to the Bank, wherever they may be, in " order to enable them (the Committee of Twenty-one) " to carry into effect the duties entrusted to them by the " majority of said Meeting of the 17th instant, and to " enable them to enter immediately on their duties. They " then required to have delivered to them; 1st, a copy of " the report of the Auditors with the appendices thereto: " and 2d, a copy of the resolutions of said Meeting of the " 17th instant.

" (Signed on behalf of the Committee),

" April 19th 1837. " JOHN THORPE."

Soon afterwards a communication was received by the Committee respecting purchasing shares, to which the following reply was returned, *viz.*

" Before the Committee can entertain the memoran- " dum delivered by Mr. Emerson on behalf of the Board, " in which a proposition is made to pay nine shillings in " the pound for the shares, we require a written and " immediate reply to the demand made to the Board " through the Lord Mayor, Mr. Gresham, Mr. Emerson, " and Mr. Kelly, this day.

" (Signed on behalf of the Committee),

" April 19th 1837. " JOHN THORPE."

At a quarter past three, Mr. Emerson, and at half-past three Mr. Gresham answered, that the Board would send a written reply to our demand to Gresham's Hotel, in half an hour from this time.

At half-past four, the Committee re-assembled at Gresham's Hotel, the whole of those Members of the Committee who met at Fleet-street being present, and also another Member (Paul Twigg), B. Sadleir, junior, in the Chair, when the following communication was received from the Board, *viz.*

"AGRICULTURAL AND COMMERCIAL BANK OF IRELAND.

"Dublin, Fleet-street, 19th April 1837.

"Sir:

"I am instructed by the Board to state that they cannot give any power or authority over the officers, or any of them, to any persons whomsoever, where not sanctioned by the laws of the Company, and they cannot recognise the twenty-one gentlemen you allude to as sanctioned.

"I am, Sir,
"Your obedient servant,

"John Thorpe, Esq. "WM. HUGHES."

"Resolved, That the foregoing communication, declining us the power we require, leaves us no alternative but to take the *report of the Auditors** as the basis of our report to the proposition.

"Resolved, That the communication respecting the purchase of shares does not come within the province of the Committee, and we cannot entertain it.

"Resolved, That the Committee have inquired into the truth and correctness of the loss sustained by the Agricultural and Commercial Bank of Ireland, and that we find, and do hereby verify, that one-fourth of the paid up capital of the Company and upwards has

* See printed report left herewith.

" been actually lost, and that the said loss has taken place
" in the business transactions of the Company.

(Signed) " BENJ. SADLEIR, jun.
" HUGH COLLUM,
" ISAAC COMERFORD,
" JOHN NORRIS,
" AUSTIN COOPER CHADWICK,
" JOHN MEAGHER,
" MICHL. JAS. BARRY,
" WILLIAM BELL,
" WM. ROBT. KEARNEY,
" CHAS. J. KNOX,
" EDWARD ROBERTS,
" JOHN THORPE.*

" MEMORANDUM.—I came into the Bank in Fleet-street
" at the time the Deputation from the Board were in
" attendance on the Committee of Twenty-one.

(Signed) " C. J. KNOX."

A further communication having been received from the Consulting Committee, a copy is subjoined.

" 19th April 1837.

" The Board of Directors, with a view to that amicable
" compromise so desirable to extinguish the dissent
" amongst the co-partners, will and do pledge themselves
" to allow dissentients to retire at 9*s*. per pound sterling
" on the respective amount of Stock paid on account of
" the first and second instalments. Such dissentients to
" signify their dissent within a fortnight from this date,
" and to assign their shares to the three Trustees of the
" Company as shares paid off, and six persons to be

* This resolution has since been signed by two others of the Twenty-one.—*Query.* Must the entire Twenty-one make the verification, or a majority of them?

" mutually chosen, three on each part (Hodges, Jones, " Chambers, Emerson, Gresham, Jonathan Pim), and an " adequate quantity of the Company's bills for such " dissentients as appear within said period to be lodged " in the Bank of Ireland, to the credit of said Trustees, " for collection, in order to be applied for the purpose " stated.

" This proposition is made under the conviction, that " it is the feeling of the Proprietors at large to have " same effected.

" The parties signifying their assent, to do so in writing " at the several Branches, in a document to be prepared " for the purpose.

" Wm. Hodges, Chairman."

" April 19, 1837."

To which Mr. Mahony wrote the following answer:

" To the Consulting Committee of the Agricultural and " Commercial Bank of Ireland.

" 43, Dame Street, Dublin, 19th April 1837.

" Gentlemen:

" I have received your proposal of this date, signed by " the Lord Mayor, offering to give 9*s*. per pound on the " amount paid on the shares of this Bank, to such Share- " holders as intimate their readiness to assign their shares " to the Trustees of the Company within a fortnight.

" I beg to intimate, that I am prepared to recommend " that your offer should be accepted, provided you can " satisfy me as to the sufficiency of the security you can " give.

" But I must stipulate, that the suspended Members of " your Board shall undertake, in writing, not to act as " Directors until after all my clients shall have their " assignments duly executed and registered, and that all

" the remaining Members of the Board do also pledge " themselves, in writing, on no account to enter into any " new arrangements on behalf of this Company, or to " take up money on the credit of my clients; and for that " purpose I should further require, that the present " public officers of the Bank should be removed, and two " others appointed, until the proposed arrangement is " carried into effect.

" This is not to be understood as waiving the rights of " the Shareholders under their resolutions of the 17th " instant, or otherwise.

" I expect your answer to this letter by twelve o'clock " to-morrow, and I have the honour to be, Gentlemen,

" Your humble servant,

" PEIRCE MAHONY."

It will be observed, that the Consulting Committee refused, by their letter of the 19th instant (see ante, fol. 80), to recognize the Committee of Twenty-one appointed by the meeting on the 17th, and consequently they have no other alternative but to adopt the report of Auditors who were appointed on the 20th March, as the groundwork of their report; and by the proceedings at the meeting on the 19th it will be seen that they have done so, and *intend to report accordingly.*

It will be observed by the resolutions on Monday, that six Scrutineers were appointed. Three of them, *viz.* Mr. Maley, Mr. Carbery, and Mr. Smith, who were named on behalf of the Consulting Committee, refused to act, and they with their party retired from the room, leaving the three other Scrutineers, who took the ballot and made a report, of which the following is a copy:

" We, the Scrutineers appointed by this Meeting to " take votes by ballot, do report that all the resolutions

" proposed by Benjamin Sadleir, Esq., together with the " election of the within Committee of Twenty-one, was " carried by 2,459 votes duly qualified, and that no votes " were tendered against said resolutions or the appoint- " ment of the Committee on the other side hereof.

" Morrison's Rooms, Dublin, 17th April 1837.

" HUGH HALLIDAY,
" WILLIAM BELL,
" WILLIAM KNOX."

Messrs. Maley, Carbery, and Smith, three of the Scrutineers appointed at the meeting of the 17th, have published the following letter in the newspaper :

" AGRICULTURAL AND COMMERCIAL BANK OF IRELAND.

" To the Editor of Saunders's News-letter.

" Sir: 20th April 1837.

" Having seen in your publication of this morning cer- " tain resolutions, alleged to have been passed at the " meeting of Shareholders of the Agricultural and Com- " mercial Bank of Ireland, held at Morrison's on Mon- " day last, by which it is alleged that we were appointed " Scrutineers to take the votes by ballot, and that a ballot " was taken, and the Scrutineers reported to the meeting " that all the resolutions proposed were carried by 2,459 " votes given by Proprietors duly qualified; we beg to " state, that we were no parties to the taking of such bal- " lot: on the contrary, we refused to be instrumental in " taking a division on any but the original amendment on " Mr. Hugh Magill's motion, which was the only ques- " tion in our opinion regularly put from the Chair, and " what the meeting had the power of entertaining, and " upon which we frequently expressed our readiness to act.

" WM. SMITH, jun.
" JAMES MALEY.
" CHRIST^R. CARBERY."

It will be observed, much controversy has arisen with respect to the proceedings at the meeting of the 17th April, grounded upon the assumed fact, that Mr. Gresham improperly took the Chair, in consequence of which a protest, of which the following is a copy, has been published.

"AGRICULTURAL AND COMMERCIAL BANK OF IRELAND.

"We, the undersigned Shareholders of this Company, "having attended at the General half-yearly Meeting "holden yesterday at Morrisson's Hotel, for the *purposes* "*mentioned in the advertisement convening the same*, do "hereby protest against the proceedings which occurred "by the riotous and illegal conduct of a body of the "Belfast Shareholders, in violently assaulting the Lord "Mayor, and otherwise violating all the usages of civil "society and public meetings. And we do hereby pro- "test against the conduct of Thomas M. Gresham, in "assuming to take the Chair at a late hour in the evening "(after Mr. Jonathan Pim, the Chairman, had vacated "the same), and continuing illegal, riotous, and improper "proceedings, subversive of the laws of the Company, "the propriety of public meetings, and the rules which "should govern the proceedings, under the laws embodied "in the deed of settlement; and, although we approve of "the reasonable proposition submitted to the meeting by "Hugh Magill, Esq. of Belfast, by allowing dissentients "to retire at an equitable valuation of the assets, so that "the Company should proceed with unanimity and har- "mony upon its native principles, we now call upon the "Board of Directors, firmly and without compromise, to "retain the position and the rights of the Proprietors, "hereby pledging ourselves to support them in uphold- "ing the Agricultural and Commercial Bank of Ireland."

To this protest 622 signatures appear; and it is stated at the foot of it, that each person has, on an average, seven votes, making 4,354 votes.

The following statement* has been published on the authority of Mr. Pim and Mr. Gresham:

"AGRICULTURAL AND COMMERCIAL BANK OF IRELAND.

"We are authorised by Mr. Jonathan Pim and Mr. "Gresham to state that, before the publication of the "resolutions of the Meeting of this Company held on the "17th instant at Morrison's Hotel, they were submitted "to each of those gentlemen; and in reference to the "protest published, and purporting to have been signed "by 620 persons, stating that Mr. Gresham had impro-"perly taken the Chair that day, we are authorised by "both these gentlemen to state, that before Mr. Pim left "the chair he sent for Mr. Gresham, and on his coming "to the platform requested that Mr. Gresham should take "the chair, and a motion to that effect having been "moved and seconded, he was called thereto; on which "Mr. Pim addressed Mr. Gresham and said, 'It was "'agreed that all the resolutions read to the Meeting "'were to be decided by one ballot.' Mr. Gresham then "announced Mr. Pim's directions to the Meeting, and "desired that the ballot should proceed. Mr. Pim at-"tended the Board-room of the Bank this day, and for "the purpose of doing justice to Mr. Gresham he made "the above statement, in presence of Mr. Dwyer, Mr. "Kelly, Mr. Tilly, Mr. Jones, and Mr. Gresham.

"Dublin 21st April 1837."

* This statement is scarcely credible, as if true, why should the parties have retired (with a large majority) from the Meeting; of the votes taken for the resolution were only 2,459. (See ante, fol. 84.)

Notwithstanding the suspension from office of the eight Members of the Committee they still continue to act, and intimate their intention to do so.

The Shareholders thus placed, are left to seek that remedy which they can legally pursue, and the object of this case is to bring the several matters before Counsel, in order that the Shareholders may be fully advised as to the course they should take: the legality of the proceedings of the Committee, and how they can enforce a compliance with the resolutions of the 17th of April last, as also as to the dissolution of the Company, the only mode which they conceive can give them effectual relief or protection.

Your attention is requested, in addition to the other clauses referred to, to the 5th, 6th, 47th, and and 51st clauses of the deed of 10th August 1836.

(For a report of the proceedings of the Meeting of the 17th April, and of that of the 18th, see the Evening Mail of Wednesday 19th and Friday 21st April.)

With reference to the protest signed by some Members of the Consulting Committee and the facts detailed, you are requested to advise,

1st. Whether the resolutions passed at the half-yearly General Meeting of the 17th April, notwithstanding the withdrawal from the Meeting of the Consulting Committee and three of the Scrutineers, were properly passed and can be supported?

1st. We are of opinon that the validity of the resolutions passed at the half-yearly General Meeting of the 17th of April was not affected, by the withdrawal from the Meeting of the Consulting Committee and three of the Scrutineers. We do not conceive that the proceedings of such a Meeting can

be rendered abortive, by the fact that dissentients, who might have remained and voted, left the Meeting before its proceedings ended.

2d. Whether the Shareholders can, by any and what means, enforce those resolutions, particularly the one appointing the Committee of Twenty-one to enquire and report into the correctness of the reported loss of one-fourth of the capital, pursuant to the 5th clause of the deed of 1836?

2d. We are of opinion, that no means exist of effectually enforcing the resolutions passed on the 17th of April. The deed of 1836 exhibits one defect, which runs through the whole frame of it, namely, that no means are provided for carrying into effect the rights given to the Shareholders without the concurrence of the Consulting Committee. The result is, that the only course for obtaining redress, when the Consulting Committee dispute what the Shareholders demand, is a bill in a Court of Equity; and that proceeding must, as we have stated in a former opinion, have for its object, not the carrying on of the business of the concern (which a Court of Equity will not interfere to aid), but the total dissolution of the Company, and the winding up of its affairs.

3d. Whether, as the Committee of Twenty-one are refused access to the books or accounts of the Company, so as to comply with the resolutions referred to in the foregoing query, they sufficiently comply with the 5th clause of the deed of 1836, by adopting the report of the four Auditors as the foundation for their report, so as to justify the further proceeding contemplated by the said 5th clause in regard to a dissolution of the Company?

3d. We are of opinion, that the Committee of Twenty-one, if they find it impracticable to obtain better evidence, may act upon the information on which the Auditors made their report, and may adopt that report as the result of their own deliberations; and we are of opinion that such report, so adopted, would fully justify the further proceedings contemplated by the 5th section of the deed, if those proceedings be not rendered abortive, for the reasons mentioned in our answer to the second query.

4th. Should you be of opinion, that the Committee of Twenty-one can adopt the Auditors' report, you will then advise, whether any Shareholder can, without any further meeting of Shareholders, legally publish a notice or notices discontinuing the Company; and whether on such publication the Company (so as to prevent any new or further liabilities being created) be considered as dissolved? And you will direct in what newspapers and gazette such notice should be published, or how otherwise can it be legally effected?

4th. We are of opinion, that no Shareholder can, by any notice or other means, accomplish a dissolution of the Company. The 5th section does not give that power. It only entitles a Shareholder to require the dissolution of the Company as far as can be consistent with law; but it gives the option to the other Shareholders to continue the Company, paying the dissentient the value of his share. It does not prescribe any mode in which this arrangement shall take place, and we see none by which the right of one or more Shareholders to dissolve the Company, if not paid the value of their shares, can be exercised, unless either by convening Special General Meetings

for the purpose (an expedient which the present conduct of the Consulting Committee seems to render impracticable), or by a bill in a Court of Equity for a dissolution.

5th. Should you be of opinion in the negative on the two preceding queries, you will advise what course should be taken with a view to a dissolution of the Company, whether by bill in Equity or by seeking an Act of Parliament for the purpose, and whether, in adopting the former course, all the individual Members of the Company are necessary parties to the pleading?

5th. This query points to the chief difficulty in which the Shareholders are involved, and our opinion is, considering the construction of the Company, the provisions of its deeds, and the circumstances under which it now is, the following modes only exist by which a dissolution of the Company can be effected. 1st. Either a bill must be filed for a dissolution, to which all the Members of the Company must be parties: a proceeding which must be attended with vast expense, and likely to be attended with abatements from deaths, which would probably prevent its being terminated until after the lapse of many years; or, 2dly. A private Act of Parliament (if that measure be practicable) must be obtained, to provide for and regulate the dissolution of the Company; or, 3dly. The parties must wait until the Legislature may amend the law, which, according to the practice now prevailing in Courts of Equity, now regulates proceedings in those Courts for the dissolution of Joint Stock Companies.

6th. Whether the eight suspended Members of the Committee have any right to interfere in the management

of the affairs of the Bank, and will their acts, either alone or jointly with the remaining Members of the Committee, or any three of them, be valid and binding on the Managers, Officers, and those dealing with the Company, or should the orders relating to the Company be issued by the remaining seven of the Consulting Committee? Have the remaining seven of the Consulting Committee, or any three of them, power to regulate the affairs of the Bank, and can they meet anywhere in Dublin for such purpose, and can they dismiss any of the present officers of the Bank, and appoint others in their stead? (See 104, Section of the Deed of 1836.)

6th. We are of opinion, that the eight suspended Members have no right to interfere in the management of the Company's affairs; but the acts of any three of the other members (that number being a quorum of the Consulting Committee,) will be valid though the suspended members shall concur in such acts. In our opinion, the unsuspended Members have vested in them all the powers of the Consulting Committee.

7th. Whether a bill for an injunction can be successfully applied for to restrain the eight suspended Members of the Consulting Committee from acting in the affairs of the Company; and who would be the proper parties plaintiffs and defendants in such a bill; and will the violence resorted to, as noted in fol. 21, be a subject of complaint in a Court of Equity, so as to induce that Court to render its aid to the Shareholders?

7th. A bill may be sustained by the unsuspended Members, or any one of them if the rest do not oppose the proceedings, and will state in their answers that they are willing to concur against the suspended Members, to restrain them from acting in

the management of the concern, and for a delivery of the books and documents in their possession to the unsuspended Members.

8th. Whether the Consulting Committee have power to purchase up the shares of the dissentient Shareholders, as proposed by their minute dated 17th April 1837 (see fol. 21), and can they bind the rest of the Company to pay the amount of such purchase-money; and do you consider the arrangement so proposed such a one as can be, and by what means, carried into effect out of the assets of the Company, as proposed, and will such an appropriation be legal and binding on the remaining Proprietors?

8th. We are of opinion, that the Consulting Committee, without the authority of a General Meeting, have not lawful power to purchase up the shares of the dissentient Shareholders or to appropriate the funds of the Company to that purpose. We are of opinion, that such a course of proceeding is one which a Court of Equity would restrain by injunction; but we are also of opinion, that such injunction would be obtained only by means of a bill filed for a dissolution of the Company, and bringing before the Court all the Shareholders.

9th. Can the Consulting Committee give any security to the retiring Shareholders, beyond their personal security against any liability of such retiring Shareholders, prior and up to the date and registration of their transfers, for the debts of the Company?

9th. We think the Consulting Committee cannot give any further security to retiring Shareholders than their own personal security: that is, that any

such arrangement would be liable to be set aside if a bill were filed by other members for that purpose. At the same time, the Consulting Committee having, in fact, the control and possession of the funds, may give to such retiring Shareholders any part of those funds they please, and the other members would have no remedy but such a bill as we have described.

10th. With reference to the 18th clause of the Act 6th Geo. IV. cap. 42, you are requested to advise, whether the liability of a retiring Shareholder is limited to three years after he has ceased to be a Member, and whether that time will begin to run from the date and execution of the deed of transfer by the assigner and assignee, and the signature of one or more Members of the Board of Directors of the Company, in testimony of their approbation of each transfer, pursuant to the provisions of the 22d section of the Act of 6th Geo. IV. cap. 42; or will the three years not begin to run until the transfer is duly registered in the Stamp Office, in the form specified as Schedule 3, in the return given by the Act? And in case the Consulting Committee now acting (including the members suspended by the resolution), or any three of them, shall incur debts on behalf of the Company after such transfer, thereby make the retired Proprietors liable to pay any such debts; and can they apply the existing assets of the Company to other purposes (as against the retiring Proprietors) than the debts actually due at the time of their ceasing to be Shareholders, and the registry of their transfers?

10th. In our opinion, the liability of a retiring Shareholder continues for three years, to be computed from the entry or registry of his transfer in the Stamp Office.

11th. In the bill filed to obtain the injunction certain allegations were made to the following effect: that the Consulting Committee, in representing their paid-into capital, included certain bills of exchange given by individuals in payment of deposits on shares, which bills were never paid, and that in other instances the parties (Members of the Committee) were allowed to draw for the full amount of the sum paid-into respect of shares, and at the time of filing the bill were indebted to the Company to the full amount.

You will advise, whether such transactions were legal and proper on the part of the Committee, as Trustees acting for and on behalf of the Shareholders at large?

12th. It is also alleged (as the fact was), that certain tradesmen were allowed to supply goods to a large amount to the Company, and to apply the price or value of such goods as payment of the shares taken in the Company's stock.

You will advise, whether such conduct was justifiable on the part of the Committee?

13th. It was further alleged (as the fact was), that a gentleman in York, who had subscribed for 180 shares of £25 each, called "British Stock," upon which the first instalment of £5 per share was paid, and when he was called upon to pay the second instalment of £5 per share the Committee allowed him to take ninety £10 shares, equal to the £900 paid in exchange for the 180 of £25 each, thus relieving him for the advance, and on an agreement that no further call should be made upon him.

You will advise, whether such agreement was authorized and properly entered into on the part of the Company, having regard to the duty and power of the Directors and the rights of the other Shareholders.

14th. It was further alleged (as the fact was), that the Consulting Committee applied £16,000 in the purchase of shares in a joint stock Bank called "The Royal Bank," which were transferred into the names of individual Members of the Consulting Committee, without having received the sanction or authority of the Shareholders at large or any meeting authorizing such a step.

Your opinion is requested, whether the Committee were justified in making such investment of the Company's stock upon their mere motion.

15th. It is also alleged (as the fact was), that a house and premises were purchased by a Member of the Consulting Committee for £1,500, he having contracted for the same with a view of sale to this Company, and without any intention of paying for it out of his own money, and he afterwards received from the Committee £2,500 for the same premises, out of which he, with three others of the Consulting Committee, divided the profit of £1,000 between them.

Counsel will advise, whether such transaction was a legal one on the part of those Members of the Consulting Committee who participated in the profits, and whether the Shareholders cannot recover the £1,000 so paid beyond the £1,500, the real purchase-money of the premises, and how?—(See Hickens *v.* Congreve, Equity Report in England.)

16th. It has been ascertained, that the Consulting Committee have in several instances purchased back from Shareholders the several shares held by them at par, in some instances taking those shares as payment of debts due by the Shareholders to the Bank, and in others as a favour, paying the parties the full money, and it appears

by the Auditor's report, that upwards of £45,348. 1*s*. 0*d*. has been so applied.

Counsel will advise, whether the Committee were, in either instance, justified in purchasing such shares?

17th. By the 6th section of the deed of 1836, the Consulting Committee for the time being have the appointment of all Officers, Managers, and Clerks necessary for the business thereof, taking proper and adequate security for any trust reposed in them or any of them. The Committee, under the authority thus reposed in them, appointed a general manager, a Mr. William Mitchell, at their head office in Dublin, who had the control over the funds of the Company, (sometimes to the amount of £50,000), and (rather singular) Mr. Mitchell never gave any security.

You are requested to advise whether the Committee were justified in permitting Mr. Mitchell thus to act without taking due security from him, and whether they are not personally resposible to the Shareholders for any consequences that might arise therefrom? The Company have now commenced an action against Mr. Mitchell, claiming £3,000 in the name of the public officer.

18th. By the 51st clause of the deed of 1836, the Committee have power to appoint proper persons to sign bills, notes, bonds, receipts, &c.

You are requested to advise, whether the present Consulting Committee generally (that is, the eight suspended members and the seven continuing ones, or the latter only) have power at the present time to authorize the signing, endorsing, or accepting any bills for the Company, so as to bind the assets and partners in the bank, and what course (if any) the Shareholders at large should take, to

prevent such an exercise of the power so vested in the Committee.

11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th. In our opinion, all the acts mentioned in these queries were such acts of misconduct in the execution of those trusts by the Consulting Committee, as to entitle the Shareholders at large to remove them, and to sustain a bill in a Court of Equity for a dissolution, since the structure of the Company affords no means of effectuating the removal of the Consulting Committee if they choose to act after a condemnatory resolution of the Shareholders. But although we think all the acts referred to were of the character we have described, we think it very questionable that any of them amounted to such malversation as imposed a liability on the Consulting Committee to indemnify the Shareholders at large against the losses thereby occasioned, save the acts mentioned in the 14th and 15th queries. With respect to these we are of opinion, that the parties concerned are bound to account to the Company for any profits they have made, and to bear themselves any losses they may have sustained by the speculations referred to in the 13th and 14th queries.

And you will also advise—

19th. Whether the public officer or public officers, without any express authority from the Committee, or merely by the authority assumed by the suspended portion of the Committee for that purpose, have power to bind the Bank, by signing or endorsing any bill or note? And should you be of opinion that they have such right, you will state whether the Shareholders can, by any and what means, control or prevent them, and thus avoid the in-

curring or creation of any new liabilities upon the Shareholders previous to their accomplishing a dissolution, or obtaining relief against the suspended Directors who withhold their control and possession of the Bank-house and all assets, and used and threatened to fire on Members of the Committee of twenty-one who went to the Bank-house to claim the right to examine the books, and to execute the necessary powers delegated to them by the public Meeting on the 17th April last.

19th. We are of opinion that the Company will be answerable to strangers on any securities negociated or any contracts entered into by the Consulting Committee while acting ostensibly in the management of the concerns; we do not see any means by which this can be prevented, but by such a bill as we have already described, or by an act of the Legislature.

On the whole it appears to us, that the Company is now involved in difficulties, from which its Members cannot be effectually relieved without the aid of the Legislature, or some amicable adjustment among themselves.

We think it worth while for those Members who are of opinion that the Company cannot safely or advantageously carry on its business, to apply at once for an Act providing for its dissolution; and it may be necessary in the mean time to file a bill, framed in the manner we have described, for restraining the Consulting Committee from acting, and praying for a dissolution. This latter measure should not be resorted to, if the Consulting Committee will consent to any mode of *ad interim* management, which will diminish the expense of the present mode of conducting the Company's affairs.

It is not, perhaps, quite foreign from the purposes of the case now before us, that we suggest the propriety of bringing under the notice of any Committee which may sit upon the affairs of this Bank, the present state of the law respecting proceedings in Equity to restrain misconduct in those entrusted with the management of Joint Stock Companies.

It is in such cases impossible to prevent or remedy the consequences of misconduct in persons entrusted with the direction of the Company's affairs, without assembling before the Court, in a suit framed for the purpose of a dissolution, all the Members of the Company, thus not only incurring an expense ruinous to all concerned, but rendering it, by the very frame of the remedy, impossible that such remedy can, if the Company be very numerous, be very practically applied. In the present instance, the Company consists of a number of Members so large, that generations might pass away before a cause to which all were parties could be brought to a hearing.

RICHARD B. WARREN.

DAVID R. PIGOT.

Dublin, 15th May 1837.

The following Opinions were also given by Sir JOHN CAMPBELL *and Mr.* EDWARD PENNEFATHER.

Mr. Attorney General will please advise, Whether the Directors, or Consulting Committee, have made pursuant to the deeds, or either of them, a legal call on the Irish Stock Shareholders, so as to enforce the same, by legal proceedings, or by declaring the shares forfeited, and selling the same, for the benefit of the Company?

I am of opinion, that the call on the Irish Stockholders of 17th October last is illegal, and cannot be enforced in any way. It is doubtful whether the proceedings of the Meeting held that day would be void, merely from the irregularity in the publication of the advertisement; but it appears to me quite clear, that there was no power to order a call, without the sanction of a Meeting of Proprietors convened for the purpose. The stipulation to this effect, in the prospectus, is expressly introduced into the deed of 1st December 1834, and is not affected by the deed of 10th August 1836. This stipulation is the basis on which the Company was formed, and is anxiously and cautiously guarded by the constitution to which the Shareholders agreed. The call of 17th of October, is in direct violation of it.

Mr. Attorney General will please advise the British Stock Shareholders, Whether the call in question on them has been legally made by the Directors, and can be enforced; and whether the Directors have power to make

calls on the British Shareholders, without, at the same time, making corresponding calls on the Irish Stock Shareholders?

I am likewise of opinion, that the call of 4th October last, on the British Stockholders, is equally illegal and incapable of being enforced. I think the manner of making calls provided for by the prospectus and first deed, must be considered embodied in the second. The 144th clause in the latter deed, respects only the mode of *paying* the calls when they have been legally made.

I think there is no power of making calls on the British Shareholders, without, at the same time, making corresponding calls on the Irish Shareholders.

(Signed) J. CAMPBELL.

Temple, January 24th 1837.

Mr. Edward Pennefather's Opinion.

1st. Whether the call on the Proprietors of Irish Stock, under the resolution of the Meeting of 17th October last, and the notices from the Directors and Secretary grounded thereon, for a third instalment, has been legally and properly made under the terms of the deeds and prospectuses which have been stated or any of them, and whether the said call can be now enforced by the Directors by legal proceedings or by declaring the shares forfeited and selling same for the benefit of the Company, or can the Directors ground any act or proceedings on this alleged call, and if in your opinion the said call has not

been legally made, what are the grounds on which your opinion is founded?

I have read the case and documents submitted for my consideration, and cannot but feel and say that this case, for its importance and complication, and extent of the queries on which my opinion is desired, would have required much more time for examination and consideration than has been allowed me, though I have considered the case a great deal.

As my opinion is however required, and promptly, for the approaching meeting, I proceed to answer the queries as well as I am able.

In my opinion the call for the third instalment, made in this case under the resolution of the Meeting of the 17th October last and the notices grounded thereon, has not been legally or properly made under the terms of the deeds referred to; and, consequently, I am of opinion that such call cannot now be enforced by the Directors, either by legal proceedings or declaration of forfeiture of the shares for non-payment of the instalments so called for. The grounds on which principally I have formed that opinion are, that due notice of holding that meeting, pursuant to the terms and requisitions of the deeds, appears not to have been given, particularly to the English proprietors, to enable the Meeting to authorise the Directors to make the call in question; and still further, that to validate any such resolution for a call at such a meeting, even supposing it had been convened on sufficient notice, it was absolutely requisite that the intention to propose and take the subject of such a call into consideration at the meeting, should have been specified in the published notice of the meeting; and, consequently, the omission of such special notice in the

present case, renders the call invalid under the terms of the deed and constitution of the partnership.

2d. Whether the call made by the Directors on the holders of the new stock set apart after the deed of 1st December 1834, under the provisions in the last deed, and called British Stocks, has been legally made and can be enforced, and if not, what has been the illegality in making the same?

I think it has not been legally made in this case, for the same reasons as I have specified in answer to the foregoing query.

3d. Whether they are bound by the deed of the 10th of August 1836, or any and which of the clauses thereof; and in particular are they bound by the 81st and 122d and other penal clauses consequent on their not paying the third instalment, or by what contract or resolutions are they now bound, and does the circumstance of the non-subscribing shareholders having taken or purchased their stock previous to, or since the date of the last deed, alter their liability?

It is difficult to answer this extensive query fully. I am inclined to think that the Shareholders who stood as such prior to the deed of 10th August 1836, and who have never signed or recognized that deed, must be considered as not bound by its terms, and, consequently, not subject to any of its clauses; but as standing under the terms of the prior deed under which they became members of the Company.

Those Shareholders who purchased their shares subsequent to the existence of the last deed, may, and must, I think, be considered as having purchased and become members of the concern subject to its

terms and stipulations, and therefore bound by it, although they may not have actually signed it.

4th. Counsel will please to point out the difference in the position, liabilities, and rights of the Shareholders who have subscribed, and of those who have not subscribed the deed of 1836 as regards the call made, and the other questions involved in this case?

As I consider the call now made as illegal and invalid as before stated, I cannot consider the liabilities of these different classes of Shareholders as affected at all thereby, whether they have subscribed the 2d deed or not. Those Shareholders who have subscribed that deed, must of course be bound to its terms in my opinion.

5th. Whether the suspension of payment by the Directors has the effect of dissolving the Company or can be made the grounds for successfully seeking a dissolution of the Company?

I do not think the temporary suspension of payments by the Directors in the present case has, *per se*, had the effect of dissolving the Company and partnership; but it might probably furnish strong grounds for sustaining a suit to dissolve it if such a suit should be instituted, unless the Directors shall be able to make a strong case in answer, and prove their full ability to carry on the operations of the Bank Company profitably, or unless default, to which such suspension might in the whole or in part be attributed, could successfully be imputed to the plaintiffs in such suit, or to those on whose behalf they might sue.

6th. Whether the requisition presented on the 6th of January was one which the Directors were bound to comply with in the whole, or in any and what part? Should that requisition be followed up by one addressed to the Secretary; and must such requisition to the Secretary be from the Shareholders who signed the previous requisition, or should another requisition be presented to the Directors, avoiding any objects stated in the requisition already presented which may not be legal?

In the event of the Secretary refusing to call a meeting, who is the other proper officer meant by the 31st clause of the old deed?

If, as I am disposed to consider, the call for the payment of the third instalment made by the Directors in this case was irregular and invalid, the ground on which the Directors rejected the requisition of the Shareholders on the 16th January last, is removed; and in such case, in my opinion, they were bound to have complied with the requisition under the terms of both the deeds. Had the call been valid, then as the requisition was, in fact, made under the 7th clause of the last deed alone, I think the Directors would have been warranted in declining to comply with it on the grounds they put forward for so acting.

If it be desired and resolved by the querists to persist in calling a General Meeting for the purposes declared, I should be disposed to recommend a body of the old Shareholders who were members of the Company prior to August 1836, and who never subscribed the 2d deed, sufficient in point of numbers and value of shares held by them under the corresponding 7th clause of the 1st deed, to sign and present a fresh requisition, stating the object of the proposed General Meeting to the Directors, calling

on them to call such General Meeting for such purpose; and in case of their refusal to comply therewith, to call on the Secretary to do so under the 31st clause of the old deed.

The "other officer" referred to in that clause I apprehend means only the person discharging the duty and office of the Secretary, *pro tempore*, in case of his absence at any time.

7th. As a general meeting, if called, cannot take place before the forfeiture of your querists' shares, if the call made for the third instalment be legal, and as the Board has intimated that all persons not having paid the third call, shall not be allowed to take any part in any future meeting, should your Querists now take any and what proceedings to entitle them to exercise the right of voting at meetings, and interfering in the management of the Company?

This query has been answered before in the preceding answer.

8th. Or should the Querists, without requiring any further meeting, at once take any, and what proceedings to assert their rights?

To avoid all questions respecting the being in arrear for any call, I am disposed to recommend the old Shareholders who have never recognised the new deed, if a sufficient number and value in shares are disposed to concur in such a requisition, to join in making it a second time to the Directors, as suggested in my answer to the preceding 6th query.

9th. Whether the non-insertion of the call for the Meeting to elect Directors in three newspapers, published

in Dublin *every day*, except Sunday, renders the election of the present Board of Directors void, and if so, how are your Querists to have their election set aside, and how should they proceed for that purpose?

If due notice was not published, as required by the terms of the deeds of the Meeting at which the present Directors were elected, that election of course would be invalid, and the Shareholders would have to proceed to a new election of such officers; and for this purpose should present a requisition to the Secretary under the terms of the deeds to call a Meeting for the purpose of such new election. But I should be disposed much to doubt that the Directors and officers would not have been more careful and accurate than to have omitted giving the required notice where so much would depend on it.

10th. Two or three of the present Board of Directors do not appear to be registered Proprietors, although they may be possessed of Stock; does that circumstance affect the validity of the acts of the Board, or the right of those now registered Proprietors to vote thereat?

I think not.

11th. Should your Querists take any and what proceedings to enforce payment of the dividend, or would the acceptance thereof confirm any part of the acts or proceedings of the Directors which would be otherwise illegal; and generally, how should your Querists act with respect to the dividend declared?

I think it would not be advisable for the Querists, while seeking to remove the present direction and invalidate their acts and call, to assert any claim to

the dividend declared by them; such a step might be considered at variance with the denial of their authority and regularity of their proceedings; and I should advise this precaution to be adhered to, even though it might be, that in the particular of the declaring the dividend the proceedings may have been regular.

12th. In case the call made for a third instalment on the Irish and British Proprietors, or either of them, be a legal one, what are your Querists bound to do to preserve their shares in the Company and their right to interfere in its management, and within what time must they comply with your directions on the subject?

If the call in question should be held valid and obligatory on the Shareholders, they of course would be bound to comply with its requisition, and would appear already, by their non-compliance therewith, to have forfeited their shares, if the Directors shall think fit so to declare.

13th. As your Querists are most anxious to compel the Directors to bring before the Proprietors the proposition of a London Board, or to compel a dissolution and division of the remaining assets; and as your Querists have great reason to apprehend that the affairs of the Company are at present improvidently managed, they are anxious to file a Bill for an injunction and dissolution, or to take such other proceeding as you may advise; you are, therefore, requested to direct what proceedings your Querists, or any, and which class of them should, under all the circumstances of this case take, and against whom, to effect the objects they have in view, or to compel the

dissolution of the Company to bring their Directors to their terms?

This has been already answered, and the course suggested previously.

14th. What are the liabilities of your querists as Shareholders in the Company, and how long will such liabilities continue?

This is quite too extensive a query for me to attempt to answer on the present occasion in such a case, nor indeed can any counsel be expected to answer such a general query; the existing difficulties must be suggested, and the particular circumstance stated, to call for counsel's opinion.

15th. Have your querists a right to inspect the books of the Company, including the minute books of the Proprietors and Directors, and take extracts from them?

They have no such right, I think, unless by a Bill in Equity, on establishing a case of mismanagement against their officers and Board of Directors.

16th. Shortly after the stoppage of the Bank, at a Meeting of a number of the Belfast Shareholders, certain resolutions were passed, grounded on statements made to the Meeting by a deputation from the Board. The Directors now rely much upon these resolutions: a newspaper containing a copy of them is sent, you will please say how far they bind any of your Querists who were present at the Meeting?

It does not appear to me that mere attendance at the Meeting alluded to in this query, would bind an individual Shareholder, who happened to be at it, unless he signed the resolutions then passed, or in

some way identified himself with the proceedings of the Meeting on that day.

17th. Your Querists beg that you will favour them with your general advice and directions on their case in its different bearings.

I have received since this case was partly written on, a letter from Mr. Emerson, and an answer to him on the part of the Directors.

I think his letter was a proper one; but it, or the answer to it, do not alter my view of the subject, or call for additional observation.

The respective parties are at issue on the validity of the call.

I see nothing else to add, either in the way of general or particular advice.

(Signed) EDWARD PENNEFATHER.

Fitzwilliam Square, Feb. 11, 1837.

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